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THE PRINCIPLES OF NATURAL and POLITIC LAW,

IN TWO VOLUMES,

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THE PRINCIPLES OF POLITIC LAW;

Being a SEQUEL to the

PRINCIPLES of the LAW of NATURE.

PART I.

Which treats of the origin and nature of civil ſociety, of ſovereignty in general, of its peculiar characteriſtic, limitations, and eſſential parts.

CHAP. I.

Containing a few general and preliminary reflections, which ſerve as an introduction to this and the following parts.

I. WHatever has been hitherto explained concerning the rights and duties of man, relates to the natural and primitive ſociety, eſtabliſhed by God himſelf, independent of human inſtitution: We muſt now treat of civil ſociety, or the body politic, which is deſervedly eſteemed the com-

pleteſt of ſocieties, and to which the name of *State* has been given by way of preference.

II. For this purpoſe we ſhall repeat here the ſubſtance of ſome principles eſtabliſhed in the preceding volume, and we ſhall give a further explication of others relative to this ſubject.

1°. Human ſociety is originally and in itſelf a ſtate of equality and independence.

2°. The inſtitution of ſovereignty deſtroys this independence.

3°. This inſtitution does not ſubvert natural ſociety.

4°. On the contrary, it contributes to ſtrengthen and cement it.

III. To form therefore a juſt idea of civil ſociety, we muſt call it natural ſociety itſelf, modified in ſuch a manner, that there is a ſovereign preſiding over it, on whoſe will whatever relates to the welfare of the ſociety ultimately depends; to the end that, by theſe means, mankind may attain, with greater certainty, that happineſs to which they all do naturally aſpire.

IV. The inſtitution of civil ſocieties produces ſome new relations amongſt mankind; I mean ſuch as ſubſiſt between thoſe different bodies or communities, which are called ſtates or nations, from whence the law of nations and civil polity are derived.

V. In fact, ſo ſoon as ſtates are formed, they acquire, in ſome meaſure, perſonal properties; and con-

ſequently we may attribute the ſame rights and obligations to them, as are attributed to individuals, conſidered as members of ſociety. And indeed it is evident, that if reaſon impoſes certain duties on individuals towards each other, it preſcribes likewiſe thoſe very ſame rules of conduct to nations, (which are compoſed only of men) in the intercourſe which they may have with each other.

VI. We may therefore apply to kingdoms and nations the ſeveral maxims of natural law hitherto explained; and the ſame law, which is called natural, when ſpeaking of individuals, is diſtinguiſhed by the name of the law of nations, when applied to men, conſidered as members forming thoſe different bodies, known by the name of ſtates or nations.

VII. To enter into this ſubject, we muſt obſerve, that the natural ſtate of nations, with reſpect to each other, is that of ſociety and peace. This ſociety is likewiſe a ſtate of equality and independence, which eſtabliſhes between them a right of equality, by which they are obliged to have the ſame regard for each other. The general principle therefore of the law of nations, is nothing more than the general law of ſociability, which obliges nations to the ſame duties as are preſcribed to individuals.

VIII. Thus the law of natural equality, that which prohibits our injuring any perſon, and commands the reparation of damage done, the law likewiſe of beneficence, of fidelity to our engagements, &c.

are ſo many laws in regard to nations, which impoſe both on the people and on their reſpective ſovereigns the ſame duties as are preſcribed to individuals.

IX. It is a point of ſome importance to attend to the nature and origin of the law of nations, ſuch as hath been here explained; for it follows from thence, that the law of nations is of equal authority with the law of nature itſelf, of which it conſtitutes a part, and that they are equally ſacred and venerable, ſince both have the Deity for their author.

X. There cannot even be any other law of nations really obligatory, and intrinſically inveſted with the force of a law. For ſince all nations are in reſpect to each other in a ſtate of perfect equality, it is beyond contradiction, that if there be any common law betwixt them, it muſt neceſſarily have God, their common ſovereign, for its author.

XI. As to what concerns the tacit conſent or cuſtoms of nations, on which ſome doctors eſtabliſh a law of nations, they cannot of themſelves produce a real obligation. For from this only, that ſeveral nations have behaved towards each other for ſome time after a certain manner, it does not follow that they have laid themſelves under a neceſſity of acting conſtantly ſo for the future, and much leſs that every other nation is obliged to conform to this cuſtom.

XII. All

XII. All that can be ſaid is, that when once a particular uſage or cuſtom is introduced between nations that have a frequent intercourſe with each other, theſe nations are, and may reaſonably be, ſuppoſed to ſubmit to this uſage, unleſs they have, in expreſs terms, declared that they will not conform to it any longer; and this is all the effect that can be attributed to the received uſages between nations.

XIII. This being premiſed, we may diſtinguiſh two ſorts of laws of nations, one neceſſary, which is obligatory of itſelf, and no way differs from the law of nature; the other arbitrary and free, founded only on a kind of tacit convention, and deriving all its force from the law of nature, which commands us to be faithful to our engagements.

XIV. What has been ſaid concerning the law of nations, furniſhes princes with ſeveral important reflections; among others, that ſince the law of nations is, in reality, nothing elſe but the law of nature itſelf, there is but one and the ſame rule of juſtice for all mankind, inſomuch that thoſe princes who violate them are as guilty of as great a crime as private people, eſpecially as their wicked actions are generally attended with more unhappy conſequences than thoſe of private people.

XV. Another conſequence that may be drawn from the principles we have eſtabliſhed relating to the law of nature and nations, is to form a juſt idea of that

ſcience ſo neceſſary to the directors of nations, which is called *Policy:* By policy therefore is meant that knowledge or ability by which a ſovereign provides for the preſervation, ſecurity, proſperity, and glory of the nation he governs, without doing any prejudice to other people, but rather conſulting their advantage as much as poſſible.

XVI. In ſhort, that which is called prudence, in reſpect to private perſons, is diſtinguiſhed by the name of policy when applied to ſovereigns; and as that miſchievous ability, by which a perſon ſeeks his own advantage to the detriment of others, and which is called artifice or cunning, is deſerving of cenſure in individuals, it is equally ſo in thoſe princes, whoſe policy aims at procuring the advantage of their own nation, to the prejudice of what they owe to other people, in virtue of the laws of humanity and juſtice.

XVII. From what has been ſaid of the nature of civil ſociety in general, it is eaſy to comprehend that, among all human inſtitutions, there is none more conſiderable than this; and that, as it embraces whatever is intereſting to the happineſs of ſociety, it is a very extenſive ſubject, and conſequently that it is important alike both to princes and people to have proper inſtructions upon this head.

XVIII. That we may reduce the ſeveral articles relative to this matter into ſome order, we ſhall divide our work into four parts.

The firſt will treat of the origin and nature of civil ſocieties, of the manner in which ſtates are formed,

formed, of ſovereignty in general, its proper characteriſtics, its limitations, and eſſential parts.

In the ſecond we ſhall explain the different forms of government, the various ways of acquiring or loſing ſovereignty, and the reciprocal duties of ſovereigns and ſubjects.

The third will contain a more particular inquiry into thoſe eſſential parts of ſovereignty which are relative to the internal adminiſtration of the ſtate, ſuch as the legiſlative power, the ſupreme power in reſpect to religion, the right of inflicting puniſhments, that which the ſovereign has over the eſtates and effects contained in his dominions, &c.

In the fourth, in fine, we ſhall explain the rights of ſovereigns with regard to foreigners, where we ſhall treat of the right of war, and of whatever is relative to that ſubject, of alliances, and other public treaties, and likewiſe of the rights of ambaſſadors.

CHAP. II.

Of the real origin of civil ſocieties.

I. CIVIL ſociety is nothing more than the union of a multitude of people, who agree to live in ſubjection to a ſovereign, in order to find, through his protection and care, the happineſs to which they naturally aſpire.

II. Whenever the queſtion concerning the origin of civil ſociety is ſtarted, it may be conſidered two different ways; for either I am aſked my opinion

concerning the origin of governments in reality and in fact; or elſe in regard to the right of congruity and fitneſs; that is, what are the reaſons which ſhould induce mankind to renounce their natural liberty, and to prefer a civil ſtate to that of nature? Let us ſee firſt what can be ſaid in regard to the fact.

III. As the eſtabliſhment of ſociety and civil government is almoſt coeval with the world, and there are but very few records extant of thoſe firſt ages; nothing can be advanced with certainty concerning the real origin of civil ſocieties. All that political writers ſay upon this ſubject is reduced to conjectures that have more or leſs probability.

IV. Some attribute the origin of civil ſocieties to paternal authority. Theſe obſerve that all the ancient traditions inform us, that the firſt men lived a long time; by this longevity, joined to the multiplicity of wives, which was then permitted, a great number of families ſaw themſelves united under the authority of one grandfather; and as it is difficult that a ſociety, any thing numerous, can maintain itſelf without a ſupreme authority, it is natural to imagine that their children, accuſtomed from their infancy to reſpect and obey their fathers, voluntarily reſigned the ſupreme command into their hands, ſo ſoon as they arrived to a full maturity of reaſon.

V. Others ſuppoſe that the fear and diffidence which mankind had of one another, was their inducement to unite together under a chief, in order to ſhelter themſelves from thoſe miſchiefs which they

they apprehended. From the iniquity of the firft men, fay they, proceeded war, as alfo the neceffity to which they were reduced of fubmitting to mafters, by whom their rights and privileges might be determined.

VI. Some there are, in fine, who pretend that the firft beginnings of civil focieties are to be attributed to ambition fupported by force or abilities. The moft dexterous, the ftrongeft, and the moft ambitious reduced at firft the fimpleft and weakeft into fubjection; thofe growing ftates were afterwards infenfibly ftrengthened by conquefts, and by the concurrence of fuch as became voluntary members of thofe focieties.

VII. Such are the principal conjectures of political writers in regard to the origin of focieties; to which let us add a few reflections.

The firft is, that in the inftitution of focieties, mankind in all probability thought rather of redreffing the evils which they had experienced, than of procuring the feveral advantages refulting from laws, from commerce, from the arts and fciences, and from all thofe other improvements fo frequently mentioned in hiftory.

2°. The natural difpofition of mankind, and their general manner of acting, do not by any means permit us to refer the inftitution of all governments to a general and uniform principle. More natural it is to think that different circumftances gave rife to different ftates.

3°. We

3°. We behold without doubt the firſt image of government in democratic ſociety, or in families; but there is all the probability in the world, that it was ambition, ſupported by force or abilities, which firſt ſubjected the ſeveral fathers of families under the dominion of a chief. This appears very agreeable to the natural diſpoſition of mankind, and ſeems further ſupported by the manner in which the ſcripture ſpeaks of Nimrod *, the firſt king mentioned in hiſtory.

4°. When ſuch a body politic was once framed, ſeveral others joined themſelves to it afterwards, through different motives; and other fathers of families being afraid of inſults or oppreſſion from thoſe growing ſtates, determined to form themſelves into the like ſocieties, and to chuſe to themſelves a chief.

5°. Be this as it may, we muſt not imagine that thoſe firſt ſtates were ſuch as exiſt in our days. Human inſtitutions are ever weak and imperfect in their beginnings, there is nothing but time and experience that can gradually bring them to perfection. The firſt ſtates were in all probability very ſmall: Kings in thoſe days were only a kind of chieftains, or particular magiſtrates, appointed for deciding diſputes, or for the command of armies. Hence we find by the moſt ancient hiſtories, that there were ſometimes ſeveral kings in one and the ſame nation.

VIII. But to conclude, whatever can be ſaid in regard to the original of the firſt governments, conſiſts, according to what we have already obſerved, in mere conjectures, that have only more or

* See Geneſis, c. x. ver. 8, & ſeq.

leſs

leſs probability. Beſides, this is a queſtion rather curious than uſeful or neceſſary; the point of importance, and that particularly intereſting to mankind, is to know whether the eſtabliſhment of government, and of a ſupreme authority, was really neceſſary, and whether mankind derive from thence any conſiderable advantages: This is what we call the right of congruity or fitneſs, and what we are going now to examine.

CHAP. III.

Of the right of congruity or fitneſs with regard to the inſtitution of civil ſociety, and the neceſſity of a ſupreme authority: of civil liberty; that it is far preferable to natural liberty, and that the ſtate is of all human conditions the moſt perfect, the moſt reaſonable, and conſequently the natural ſtate of man.

I. WE are here to inquire, whether the eſtabliſhment of civil ſociety, and of a ſupreme authority, was abſolutely neceſſary to mankind, or whether they could not live happy without it? And whether ſovereignty, whoſe original is owing perhaps to uſurpation, ambition, and violence, does not include an attempt againſt the natural equality and independency of man? Theſe are without doubt queſtions of importance, and which merit the utmoſt attention.

II. I grant, at firſt ſetting out, that the primitive and original ſociety which nature has eſtabliſhed amongſt mankind, is a ſtate of equality and independence; it is likewiſe true, that the law of nature is that to which all men are obliged to conform their actions; and in fine it is certain, that this law is in itſelf moſt perfect, and the beſt adapted for the preſervation and happineſs of mankind.

III. It muſt likewiſe be granted, that if mankind, during the time they lived in natural ſociety, had exactly conformed to nature's laws, nothing would have been wanting to complete their happineſs, nor would there have been any occaſion to eſtabliſh a ſupreme authority upon earth. They would have lived in a mutual intercourſe of love and beneficence, in a ſimplicity without ſtate or pomp, in an equality without jealouſy, ſtrangers to all ſuperiority but that of virtue, and to every other ambition than that of being diſintereſted and generous.

IV. But mankind were not long directed by ſo perfect a rule; the vivacity of their paſſions ſoon weakened the force of nature's law, which ceaſed now to be a bridle ſufficient for them, ſo that they could no longer be left to themſelves thus weakened and blinded by their paſſions. Let us explain this a little more particularly.

V. Laws are incapable of contributing to the happineſs of ſociety, unleſs they be ſufficiently known. The laws of nature cannot be known otherwiſe to man, than as he makes a right uſe of his reaſon; but as the greateſt part of mankind, abandoned to themſelves, liſten rather to the prejudices of paſſion than to

to reafon and truth, it thence follows, that in the ftate of natural fociety, the laws of nature were known but very imperfectly, and confequently that in this condition of things man could not lead an happy life.

VI. Befides, the ftate of nature wanted another thing neceffary for the happinefs and tranquillity of fociety, I mean a common judge, acknowledged as fuch, whofe bufinefs it is to decide the differences that every day arife betwixt individuals.

VII. In this ftate, as every one would be fupreme arbiter of his own actions, and would have a right of being judge himfelf, both of the laws of nature and of the manner in which he ought to apply them, this independence and exceffive liberty could not but be productive of diforder and confufion, efpecially in cafes where there happened to be any clafhing of interefts or paffions.

VIII. In fine, as in the ftate of nature no one had a power of enforcing the execution of the laws, nor an authority to punifh the violation of them, this was a third inconveniency of the ftate of primitive, fociety, by which the efficacy of natural laws was almoft intirely deftroyed. For as men are framed, the laws derive their greateft force from the coercive power, which, by exemplary punifhments, intimidates the wicked, and balances the fuperior force of pleafure and paffion.

IX. Such were the inconveniencies that attended the ftate of nature. By the exceffive liberty and independence

dependence which mankind enjoyed, they were hurried into perpetual troubles; for which reafon they were under an abfolute neceffity of quitting this ftate of independence, and of feeking a remedy againft the evils of which it was productive; and this remedy they found in the eftablifhment of civil fociety and a fovereign authority.

X. But this could not be obtained without effecting two things equally neceffary; the firft was to unite together by means of a more particular fociety; the fecond to form this fociety under the dependence of a perfon invefted with an uncontrolable power, to the end that he might maintain order and peace.

XI. By thefe means they remedied the inconveniencies above-mentioned. The fovereign, by promulgating his laws, acquaints his fubjects with the rules which they ought to follow. We then ceafe to be judges in our own caufe, our whims and paffions are checked, and we are obliged to contain ourfelves within the limits of that regard and refpect which we owe to each other.

XII. This might be fufficient to prove the neceffity of government, and of a fupreme authority in fociety, and to eftablifh the right of congruity or fitnefs in this refpect: But as it is a queftion of the utmoft importance; as mankind have a particular intereft in being well acquainted with their ftate; as they have a natural paffion for independence, and generally frame falfe notions of liberty; it will not

not be improper to continue our reflections on this ſubject.

XIII. Let us therefore examine into natural and civil liberty; let us afterwards endeavour to ſhew, that civil liberty is far preferable to that of nature, and conſequently, that the ſtate which it produces, is of all human conditions the moſt perfect, and, to ſpeak with exactneſs, the true natural ſtate of man.

XIV. The reflections we have to make upon this ſubject are of the laſt importance, affording uſeful leſſons both to princes and ſubjects. The greateſt part of mankind are ſtrangers to the advantages of civil ſociety, or at leaſt they live in ſuch a manner, as to give no attention to the beauty or excellence of this ſalutary inſtitution. On the other hand, princes often loſe ſight of the end for which they were appointed, and inſtead of thinking that the ſupreme authority was eſtabliſhed for no other purpoſe than for the maintenance and ſecurity of the liberty of mankind, that is, to make them enjoy a ſolid happineſs, they frequently direct it to a different end, and to their own private advantage. Nothing therefore is more neceſſary than to remove the prejudices both of ſovereigns and ſubjects in regard to this article.

XV. Natural liberty is the right which nature gives to all mankind, of diſpoſing of their perſons and property, after the manner they judge moſt convenient to their happineſs, on condition of their act-

ing

ing within the limits of the law of nature, and of their not abuſing it to the prejudice of other men. To this right of liberty there is a reciprocal obligation correſponding, by which the law of nature binds all mankind to reſpect the liberty of other men, and not to diſturb them in the uſe they make of it, ſo long as they do not abuſe it.

XVI. The laws of nature are therefore the rule and meaſure of liberty; and in the primitive and natural ſtate, mankind have no liberty but what the laws of nature give them; for which reaſon it is proper to obſerve here, that the ſtate of natural liberty is not that of an intire independence. In this ſtate, men are indeed independent with regard to one another, but they are all in a ſtate of dependence on God and his laws. Independence, generally ſpeaking, is a ſtate unſuitable to man, becauſe by his very nature he holds it of a ſuperior.

XVII. Liberty and independence of any ſuperior, are two very diſtinct things, which muſt not be confounded. The firſt belongs eſſentially to man, the other cannot ſuit him. And ſo far is it from being true, that human liberty is of itſelf inconſiſtent with dependence on a ſovereign and ſubmiſſion to his laws, that, on the contrary, it is this power of the ſovereign, and the protection which men derive from thence, that forms the greateſt ſecurity of their liberty.

XVIII. This will be ſtill better underſtood by recollecting what we have already ſettled, when ſpeak-

ſpeaking of natural liberty. We have ſhewn that the reſtrictions which the law of nature makes to the liberty of man, far from diminiſhing or ſubverting it, on the contrary conſtitutes its perfection and ſecurity. The end of natural laws is not ſo much to reſtrain the liberty of man, as to make him act agreeably to his real intereſts; and moreover, as theſe very laws are a check to human liberty, in whatever may be of pernicious conſequence to others, it ſecures, by theſe means, to all mankind, the higheſt, and the moſt advantageous degree of liberty they can reaſonably deſire.

XIX. We may therefore conclude, that in the ſtate of nature man could not enjoy all the advantages of liberty, but inaſmuch as this liberty was made ſubject to reaſon, and the laws of nature were the rule and meaſure of the exerciſe of it. But if it be true in fact, that the ſtate of nature was attended with the ſeveral inconveniencies already mentioned, inconveniencies which almoſt effaced the impreſſion and force of natural laws, it is a plain conſequence, that natural liberty muſt have greatly ſuffered thereby, and that by not being reſtrained within the limits of the law of nature, it could not but degenerate into licentiouſneſs, and reduce mankind to the moſt frightful and the moſt melancholy of ſituations.

XX. As they were perpetually divided by contentions, the ſtrongeſt oppreſſed the weakeſt; they poſſeſſed nothing with tranquillity; they enjoyed no repoſe: and what we ought particularly to obſerve is, that all theſe evils were owing chiefly to that very

independence which mankind were poffeffed of in regard to each other, and which deprived them of all fecurity of the exercife of their liberty; infomuch that by being too free, they enjoyed no freedom at all; for freedom there can be none, when it is not fubject to the direction of laws.

XXI. If it be therefore true, that the civil ftate gives a new force to the laws of nature, if it be true alfo, that the eftablifhment of fovereignty fecures, in a more effectual manner, the obfervance of thofe laws, we muft conclude, that the liberty, which man enjoys in this ftate, is far more perfect, more fecure, and better adapted to procure his happinefs, than that which he was poffeffed of in the ftate of nature.

XXII. True it is that the inftitution of government and fovereignty is a confiderable limitation to natural liberty, for man muft renounce that power of difpofing of his own perfon and actions, in a word, his independence. But what better ufe could mankind make of their liberty, than to renounce every dangerous tendency it had in regard to themfelves, and to preferve no more of it than was neceffary to procure their own real and folid happinefs?

XXIII. Civil liberty is therefore, in the main, nothing more than natural liberty, divefted of that part of it which formed the independence of individuals, by the authority which they have conferred on their fovereign.

XXIV. This liberty is ſtill attended with two conſiderable advantages, which natural liberty had not. The firſt is, the right of inſiſting that their ſovereign ſhall make a good uſe of his authority, agreeably to the purpoſes for which he was intruſted with it. The ſecond is the ſecurity which prudence requires that the ſubjects ſhould reſerve to themſelves for the execution of the former right, a ſecurity abſolutely neceſſary, and without which the people can never enjoy any ſolid liberty.

XXV. Let us therefore conclude, that to give an adequate definition of civil liberty, we muſt ſay, that it is natural liberty itſelf, diveſted of that part, which conſtituted the independence of individuals, by the authority which it confers on ſovereigns, and attended with a right of inſiſting on his making a good uſe of his authority, and with a moral ſecurity that this right will have its effect.

XXVI. Since civil liberty therefore is far preferable to that of nature, we may ſafely conclude, that the civil ſtate, which procures this liberty to mankind, is of all human ſtates the moſt perfect, the moſt reaſonable, and of courſe the true natural ſtate of man.

XXVII. And indeed, ſince man, by his nature, is a free and intelligent being, capable of diſcovering his ſtate by himſelf, as well as its ultimate end, and of taking the neceſſary meaſures to attain it, it is properly in this point of view that we muſt conſider his natural ſtate; that is, the natural ſtate of man

muſt be that, which is moſt agreeable to his nature, to his conſtitution, to reaſon, to the good uſe of his faculties, and to his ultimate end; all which circumſtances perfectly agree with the civil ſtate. In ſhort, as the inſtitution of government and ſupreme authority brings men back to the obſervance of the laws of nature, and conſequently to the road of happineſs, it makes them return to their natural ſtate, from whence they had ſtrayed by the bad uſe which they made of their liberty.

XXVIII. The reflections we have here made on the advantages which men derive from government, deſerve very great attention.

1°. They are extremely proper for removing the falſe notions which moſt people have upon this ſubject; as if the civil ſtate could not be eſtabliſhed but in prejudice to their natural liberty, and as if government had been invented only to ſatisfy the ambition of deſigning men, contrary to the intereſt of the reſt of the community.

2°. They inſpire mankind with a love and reſpect for ſo ſalutary an inſtitution, diſpoſing them thus to ſubmit voluntarily to whatever the civil ſociety requires of them, from a conviction that the advantages from thence derived are very conſiderable.

3°. They may likewiſe contribute greatly to the increaſe of the love of one's country, the firſt ſeeds of which nature herſelf has implanted, as it were, in the hearts of all mankind, in order to promote, as it moſt effectually does, the happineſs of ſociety. Sextus Empiricus relates, "that it was a cuſtom among "the ancient Perſians, upon the death of a king,

"to paſs five days in a ſtate of anarchy, as an inducement to be more faithful to his ſucceſſor, from the experience they acquired of the inconveniencies of anarchy, of the many murders, robberies, and every other miſchief, with which it is pregnant *."

XXIX. As theſe reflections are proper for removing the prejudices of private people, ſo they likewiſe contain moſt excellent inſtructions even for ſovereigns. For is there any thing better adapted for making princes ſenſible of the full extent of their duty, than to reflect ſeriouſly on the ends which the people propoſed to themſelves in intruſting them with their liberty, that is, with whatever is moſt valuable to them; and on the engagements into which they entered, by charging themſelves with ſo ſacred a depoſit? When mankind renounced their independence and natural liberty, by giving maſters to themſelves, it was in order to be ſheltered from the evils with which they were afflicted, and in hopes, that under the protection and care of their ſovereign, they ſhould meet with ſolid happineſs. Thus have we ſeen, that by civil liberty mankind acquired a right of inſiſting upon their ſovereign's uſing his authority agreeably to the deſign with which he was entruſted with it, which was to render their ſubjects wiſe and virtuous, and thereby to promote their real felicity. In a word, whatever has been ſaid concerning the advantages of the civil ſtate preferably

* Adverſ. Mathemat, lib. 2. § 33. Vid. Herodot. lib. 1. cap. 96, & ſeq.

to that of nature, ſuppoſes this ſtate in its due perfection; and that both ſubjects and ſovereign diſcharge their duties towards each other.

CHAP. IV.

Of the eſſential conſtitution of ſtates, and of the manner in which they are formed.

I. AFTER treating of the original of civil ſocieties, the natural order of our ſubject leads us to examine into the eſſential conſtitution of ſtates, that is, into the manner in which they are formed, and the internal frame of thoſe ſurprizing ſtructures.

II. From what has been ſaid in the preceding chapter it follows, that the only effectual method which mankind could employ in order to ſkreen themſelves from the evils with which they were afflicted in the ſtate of nature, and to procure to themſelves all the advantages wanting to their ſecurity and happineſs, muſt be drawn from man himſelf, and from the aſſiſtance of ſociety.

III. For this purpoſe, it was neceſſary that a multitude of people ſhould unite in ſo particular a manner, that their preſervation muſt depend on each other, to the end that they remain under a neceſſity of mutual aſſiſtance, and by this junction of ſtrength and intereſts, be able not only to repel the inſults againſt

againſt which each individual could not guard ſo eaſily, but alſo to contain thoſe who ſhould attempt to deviate from their duty, and to promote, more effectually, their common advantage. Let us explain more particularly how this could be effected.

IV. Two things were neceſſary for this purpoſe. 1°. It was neceſſary to unite for ever the wills of all the members of the ſociety, in ſuch a manner, that from that time forward they ſhould never deſire but one and the ſame thing in whatever relates to the end and purpoſe of ſociety. 2°. It was requiſite afterwards to eſtabliſh a ſupreme power ſupported by the ſtrength of the whole body (by which means they might over-awe thoſe who ſhould be inclinable to diſturb the peace) and to inflict a preſent and ſenſible evil on ſuch as ſhould attempt to act contrary to the public good.

V. It is from this union of wills and of ſtrength, that the body politic or ſtate reſults, and without it we could never conceive a civil ſociety. For let the number of confederates be ever ſo great, if each man was to follow his own private judgment in things relating to the public good, they would only embarraſs one another, and the diverſity of inclinations and judgments, ariſing from the levity and natural inconſtancy of man, would ſoon demoliſh all concord, and mankind would thus relapſe into the inconveniencies of the ſtate of nature. Beſides, a ſociety of that kind could never act long in concert, and for the ſame end, nor maintain itſelf in that harmony which conſtitutes its whole ſtrength, without a ſupe-

rior power, whofe bufinefs it is to ferve as a check to the inconftancy and malice of man, and to oblige each individual to direct all his actions to the public utility.

VI. All this is performed by means of covenants; for this union of wills in one and the fame perfon could never be fo effected, as to actually deftroy the natural diverfity of inclinations and fentiments; but it is done by an engagement which every man enters into, of fubmitting his private will to that of a fingle perfon, or of an affembly; infomuch that every refolution of this perfon or affembly, concerning things relative to the public fecurity or advantage, muft be confidered as the pofitive will of all in general, and of each in particular.

VII. With regard to the union of ftrength, which produces the fovereign power, it is not formed by each man's communicating phyfically his ftrength to a fingle perfon, fo as to remain utterly weak and impotent; but by a covenant or engagement, whereby all in general, and each in particular, oblige themfelves to make no ufe of their ftrength, but in fuch a manner as fhall be prefcribed to them by the perfon on whom they have, with one common accord, conferred the fupreme authority.

VIII. By this union of the body politic under one and the fame chief, each individual acquires, in fome meafure, as much ftrength as the whole fociety united. Suppofe, for inftance, there are a million of men in the commonwealth, each man is able to refift this million,

million, by means of their ſubjection to the ſovereign, who keeps them all in awe, and hinders them from hurting one another. This multiplication of ſtrength in the body politic reſembles that of each member in the human body; take them aſunder, and their vigor is no more; but by their mutual union the ſtrength of each increaſes, and they form, all together, a robuſt and animated body.

IX. The ſtate may be defined, a ſociety by which a multitude of people unite together, under the dependence of a ſovereign, in order to find, through his protection and care, the happineſs to which they naturally aſpire. The definition which Tully gives, amounts pretty near to the ſame. *Multitudo juris conſenſu, & utilitatis communione ſociata.* A multitude of people united together by a common intereſt, and by common laws, to which they ſubmit with one accord.

X. The ſtate is therefore conſidered as a body, or as a moral perſon, of which the ſovereign is the chief or head, and the ſubjects are the members; in conſequence of which we attribute to this perſon certain actions peculiar to him, certain rights, privileges, and poſſeſſions, diſtinct from thoſe of each citizen, and to which neither each citizen, nor many, nor even all together, can pretend, but only the ſovereign.

XI. It is moreover this union of ſeveral perſons in one body, produced by the concurrence of the wills and the ſtrength of every individual in one and the ſame perſon, that diſtinguiſhes the ſtate from a multitude.

titude. For a multitude is only an aſſemblage of ſeveral perſons, each of whom has his own private will, with the liberty of judging according to his own notions of whatever is propoſed to him, and of determining as he pleaſes; for which reaſon they cannot be ſaid to have only one will. Whereas the ſtate is a body, or a ſociety, animated by one only ſoul, which directs all its motions, and makes all its members act after a conſtant and uniform manner, with a view to one and the ſame end, namely, the public utility.

XII. But it will be here objected, that if the union of the will and of the ſtrength of each member of the ſociety, in the perſon of the ſovereign, deſtroys neither the will nor the natural force of each individual; if they always continue in poſſeſſion of it; and if they are able, in fact, to employ it againſt the ſovereign himſelf, what does the force of the ſtate conſiſt in, and what is it that conſtitutes the ſecurity of this ſociety? I anſwer, that two things contribute chiefly to maintain the ſtate, and the ſovereign, who is the ſoul of it.

The firſt is the engagement itſelf, by which individuals have ſubjected themſelves to the command of a ſovereign, an engagement which derives a conſiderable force both from divine authority, and from the ſanction of an oath. But as to vicious and ill-diſpoſed minds, on whom theſe motives make no impreſſion, the ſtrength of the government conſiſts chiefly in the fear of thoſe puniſhments which the ſovereign may inflict upon them, by virtue of the power with which he is inveſted.

XIII. Now

XIII. Now ſince the means, by which the ſovereign is enabled to compel rebellious and refractory perſons to their duty, conſiſts in this, that the reſt of the ſubjects join their ſtrength with him for this end (for, were it not for this, he would have no more power than the loweſt of his ſubjects) it follows from thence, that it is the ready ſubmiſſion of good ſubjects that furniſhes the ſovereign with the means of repreſſing the inſolent, and of maintaining his authority.

XIV. But provided a ſovereign ſhews never ſo ſmall an attachment to his duty, he will always find it eaſy to fix the better part of his ſubjects in his intereſt, and of courſe to have the greateſt part of the ſtrength of the ſtate in his hands, and to maintain the authority of the government. Experience has always ſhewn that princes only need a common ſhare of virtue to be adored by their ſubjects. We may therefore affirm, that the ſovereign is capable of deriving from himſelf the means neceſſary for the ſupport of his authority, and that a prudent exerciſe of the ſovereignty, purſuant to the end for which it was deſigned, conſtitutes at the ſame time the happineſs of the people, and, by a neceſſary conſequence, the greateſt ſecurity of the government in the perſon of the ſovereign.

XV. Tracing the principles here eſtabliſhed in regard to the formation of ſtates, &c. were we to ſuppoſe that a multitude of people, who had lived hitherto independent of each other, wanted to eſtabliſh a civil ſociety, we ſhall find a neceſſity

ceſſity for different covenants, and for a general decree.

1°. The firſt covenant is that by which each individual engages with all the reſt to join for ever in one body, and to regulate, with one common conſent, whatever regards their preſervation and their common ſecurity. Thoſe who do not enter into this firſt engagement, remain excluded from the new ſociety.

2°. There muſt afterwards be a decree made for ſettling the form of government; otherwiſe they could never take any fixt meaſures for promoting, effectually and in concert, the public ſecurity and welfare.

3°. In fine, when once the form of government is ſettled, there muſt be another covenant, whereby, after having pitched upon one or more perſons to be inveſted with the power of governing, thoſe on whom this ſupreme authority is conferred, engage to conſult moſt carefully the common ſecurity and advantage, and the others promiſe fidelity and allegiance to the ſovereign. This laſt covenant includes a ſubmiſſion of the ſtrength and will of each individual to the will of the head of the ſociety, as far as the public good requires; and thus it is that a regular ſtate and perfect government are formed.

XVI. What we have hitherto delivered may be further illuſtrated by the account we have in hiſtory concerning the foundation of the Roman ſtate. At firſt we behold a multitude of people, who flock together with a view of ſettling on the banks of the Tiber; afterwards they conſult about what form of govern-

government they ſhall eſtabliſh, and the party for monarchy prevailing, they confer the ſupreme authority on Romulus *.

XVII. And though we are ſtrangers to the original of moſt ſtates, yet we muſt not imagine that what has been here ſaid, concerning the manner in which civil ſocieties are formed, is a mere fiction. For ſince it is certain, that all civil ſocieties had a beginning, it is impoſſible to conceive, how the members, of which they are compoſed, could agree to live together, dependent on a ſupreme authority, without ſuppoſing the covenants above-mentioned.

XVIII. And yet all political writers do not explain the origin of ſtates after our manner. Some there are † who pretend, that ſtates are formed merely by the covenant of the ſubjects with one another, by which each man enters into an engagement with all the reſt not to reſiſt the will of the ſovereign, upon condition that the reſt on their ſide ſubmit to the ſame engagement; but they pretend that there is no original compact between the ſovereign and the ſubjects.

XIX. The reaſon why theſe writers give this explication of the matter, is obvious. Their deſign is to give an arbitrary and unlimited authority to ſovereigns, and to deprive the ſubjects of every means of withdrawing their allegiance upon any pretext whatever, notwithſtanding the bad uſe the ſovereign

* See Dionyſius Halicarn. lib. 2. in the beginning.
† A. Hobbes, de Cive, cap. v. § 7.

may

may make of his authority. For this purpofe it was abfolutely neceffary to free kings from all reftraint of compact or covenant between them and their fubjects, which, without doubt, is the chief inftrument of limiting their power.

XX. But notwithftanding it is of the utmoft importance to mankind, to fupport the authority of kings, and to defend it againft the attempts of reftlefs or mutinous fpirits, yet we muft not deny evident truths; or refufe to acknowledge a covenant, in which there is manifeftly a mutual promife, of performing things to which they were not before obliged.

XXI. When I fubmit voluntarily to a prince, I promife him allegiance, on condition that he will protect me; the prince on his fide promifes me his protection, on condition that I will obey him. Before this promife, I was not obliged to obey him, nor was he obliged to protect me, at leaft by any *perfect* obligation; it is therefore evident, that there muft be a mutual engagement.

XXII. But there is ftill fomething more; for fo far is the fyftem we are here refuting, from ftrengthening the fupreme authority, and from fcreening it from the capricious invafions of the fubject, that, on the contrary, nothing is of a more dangerous confequence to fovereigns, than to fix their right on fuch a foundation. For if the obligation of the fubjects towards their princes is founded merely on the mutual covenant between the fubjects, by which each

man

man engages for the ſake of the reſt to obey the ſovereign, on condition that the reſt do the ſame for his ſake; it is evident, that at this rate every ſubject makes the force of his engagement depend on the execution of that of every other fellow-ſubject; and conſequently if any one refuſes to obey the ſovereign, all the reſt ſtand releaſed from their allegiance. Thus by endeavouring to extend the rights of ſovereigns beyond their juſt limits, inſtead of ſtrengthening, they rather inadvertently weaken them.

CHAP. V.

Of the ſovereign, ſovereignty, and the ſubjects.

I. THE ſovereign in a ſtate, is that perſon who has a right of commanding in the laſt reſort.

II. As to the ſovereignty we muſt define it, the right of commanding civil ſociety in the laſt reſort, which right the members of this ſociety have conferred on one and the ſame perſon, with a view to preſerve order and ſecurity in the commonwealth, and, in general, to procure, under his protection and through his care, their own real happineſs, and eſpecially the ſure exerciſe of their liberty.

III. I ſay, in the firſt place, that ſovereignty is the right of commanding civil ſociety in the laſt reſort, to ſhew that the nature of ſovereignty conſiſts chiefly in two things.

The

The firſt is, the right of commanding the members of the ſociety, that is, of directing their actions with authority, or with a power of compelling.

The ſecond is, that this right ought to be that of commanding in the laſt reſort in ſuch a manner, that every private perſon be obliged to ſubmit, without a power left to any man of reſiſting. Otherwiſe, if this authority was not ſuperior to every other upon earth, it could eſtabliſh no order or ſecurity in the commonwealth, though theſe are the ends for which it was eſtabliſhed.

IV. In the ſecond place, I ſay, that it is a right conferred upon a perſon, and not upon a man, to denote that this perſon may be, not only a ſingle man, but likewiſe a multitude of men, united in council, and forming only one will, by means of a plurality of ſuffrages, as we ſhall more particularly explain hereafter.

V. Thirdly, I ſay, to one and the ſame perſon, to ſhew that ſovereignty can admit of no ſhare or partition, that there is no ſovereign at all when there are many, becauſe there is no one who commands then in the laſt reſort, and none of them being obliged to give way to the other, their competition muſt neceſſarily throw every thing into diſorder and confuſion.

VI. I add, in fine, to procure their own happineſs, &c. in order to point out the end of ſovereignty, that is, the welfare of the people. When ſovereigns once loſe ſight of this end, when they pervert it to their

their private interefts, or caprices, fovereignty then degenerates into tyranny, and ceafes to be a legitimate authority. Such is the idea we ought to form of a fovereign and of fovereignty.

VII. All the other members of the ftate are called fubjects, that is, they are under an obligation of obeying the fovereign.

VIII. Now a perfon becomes a member or fubject of a ftate two ways, either by an exprefs or by a tacit covenant.

IX. If by an exprefs covenant, the thing admits of no difficulty. But, with regard to a tacit covenant, we muft obferve that the firft founders of ftates, and all thofe who afterwards became members thereof, are fuppofed to have ftipulated, that their children and defcendants fhould, at their coming into the world, have the right of enjoying thofe advantages which are common to all the members of the ftate, provided neverthelefs that thefe defcendants, when they attain to the ufe of reafon, be on their part willing to fubmit to the government, and to acknowledge the authority of the fovereign.

X. I faid, provided the defcendants acknowledged the authority of the fovereign; for the ftipulation of the parents cannot, in its own nature, have the force of fubjecting the children againft their will to an authority, to which they would not of themfelves chufe to fubmit: Hence the authority of the fovereign over the children of the members of the ftate, and the

right, on the other hand, which theſe children have to the protection of the ſovereign, and to the advantages of the government, are founded on mutual conſent.

XI. Now if the children of members of the ſtate, upon attaining to the years of diſcretion, are willing to live in the place of their parentage, or in their native country, they are by this very act ſuppoſed to ſubmit themſelves to the power that governs the ſtate, and conſequently they ought to enjoy, as members of that ſtate, the advantages naturally ariſing from it. This is the reaſon likewiſe, that when once the ſovereign is acknowledged, he has no occaſion to tender the oath of allegiance to the children, who are afterwards born in his dominions.

XII. Beſides, it is a maxim which has been ever conſidered as a general law of government, that whoſoever merely enters upon the territories of a ſtate, and by a much ſtronger reaſon, thoſe who are deſirous of enjoying the advantages which are to be found there, are ſuppoſed to renounce their natural liberty, and to ſubmit to the eſtabliſhed laws and government, ſo far as the public and private ſafety requires. And if they refuſe to do this, they may be conſidered as enemies, in this ſenſe at leaſt, that the government has a right to expel them the country; and this is likewiſe a tacit covenant, by which they make a temporary ſubmiſſion to the government.

XIII. Subjects are ſometimes called *cives*, or members of the civil ſtate; ſome indeed make no diſtinction

ftinction between thefe two terms, but I think it is better to diftinguifh them. The appellation of *civis* ought to be underftood only of thofe who fhare in all the advantages and privileges of the affociation, and who are properly members of the ftate, either by birth, or in fome other manner. All the reft are rather inmates, ftrangers, or temporary inhabitants, than members. As to women and fervants, the title of member is applicable to them only, inafmuch as they enjoy certain rights, in virtue of their dependence on their domeftic governor; who is properly a member of the ftate; and all this depends on the laws and particular cuftoms of each government.

XIV. To proceed; members, befides the general relation of being united in the fame civil fociety, have likewife many other particular relations, which are reducible to two principal ones.

The firft is, when private people compofe particular bodies or corporations.

The fecond is, when fovereigns entruft particular perfons with fome fhare of the adminiftration.

XV. Thofe particular bodies are called *Companies*, *Chambers*, *Colleges*, *Societies*, *Communities*. But it is to be obferved, that all thefe particular focieties are finally fubordinate to the fovereign.

XVI. Befides, we may confider fome as more ancient than the eftablifhment of civil ftates, and others as formed fince.

 XVII. The

XVII. The latter are likewiſe either public, ſuch as are eſtabliſhed by the authority of the ſovereign, and then they generally enjoy ſome particular privileges, agreeably to their patents: or private, ſuch as are formed by private people.

XVIII. In fine, theſe private bodies are either lawful or unlawful. The former are thoſe, which, having nothing in their nature contrary to good order, good manners, or the authority of the ſovereign, are ſuppoſed to be approved of by the ſtate, though they have not received any formal ſanction. With reſpect to unlawful bodies, we mean not only thoſe whoſe members unite for the open commiſſion of any crime, ſuch as gangs of robbers, thieves, pirates, banditti, but likewiſe all other kinds of confederacy, which the ſubjects enter into, without the conſent of the ſovereign, and contrary to the end of civil ſociety. Theſe engagements are called cabals, factions, conſpiracies.

XIX. Thoſe members whom the ſovereign entruſts with ſome ſhare of the adminiſtration, which they exerciſe in his name and by his authority, have in conſequence thereof particular relations to the reſt of the members, and are under ſtronger engagements to the ſovereign; theſe are called miniſters, public officers, or magiſtrates.

XX. Such are the regents of a kingdom, during a minority, the governors of provinces and towns, the commanders of armies, the directors of the treaſury, the preſidents of courts of juſtice, ambaſſadors,

or envoys to foreign powers, &c. As all theſe perſons are entruſted with a ſhare of the adminiſtration, they repreſent the ſovereign, and it is they that have properly the name of public miniſters.

XXI. Others there are, who aſſiſt merely in the execution of public buſineſs, ſuch as counſellors, who only give their opinion, ſecretaries, receivers of the public revenue, ſoldiers, ſubaltern officers, &c.

CHAP. VI.

Of the immediate ſource, and foundation of ſovereignty.

I. THOUGH what has been ſaid in the fourth chapter concerning the ſtructure of ſtates, is ſufficient to ſhew the original and ſource of ſovereignty, as well as its real foundation; yet as this is one of thoſe queſtions on which political writers are greatly divided, it will not be amiſs to examine it ſomewhat more particularly; and what remains ſtill to be ſaid upon this ſubject, will help to give us a more complete idea of the nature and end of ſovereignty.

II. When we inquire here into the ſource of ſovereignty, our intent is to know the neareſt and immediate ſource of it; now it is certain, that the ſupreme authority, as well as the title on which this power is eſtabliſhed, and which conſtitutes its right, is derived immediately from the very covenants

which conſtitute civil ſociety, and give birth to government.

III. And indeed, upon conſidering the primitive ſtate of man, it appears moſt certain, that the appellations of ſovereigns and ſubjects, maſters and ſlaves, are unknown to nature. Nature has made us all of the ſame ſpecies, all equal, all free and independent of each other; in ſhort, ſhe was willing that thoſe, on whom ſhe has beſtowed the ſame faculties, ſhould have all the ſame rights. It is therefore beyond all doubt, that, in this primitive ſtate of nature, no man has of himſelf an original right of commanding others, or any title to ſovereignty.

IV. There is none but God alone that has, in conſequence of his nature and perfections, a natural, eſſential, and inherent right of giving laws to mankind, and of exerciſing an abſolute ſovereignty over them. The caſe is otherwiſe between man and man; they are in their own nature as independent of one another, as they are dependent on God. This liberty and independence is therefore a right naturally belonging to man, of which it would be unjuſt to deprive him againſt his will.

V. But if this be the caſe, and there is yet a ſupreme authority ſubſiſting amongſt mankind, whence can this authority ariſe, unleſs it be from the compacts or covenants, which men have made amongſt themſelves upon this ſubject? For as we have a right of transferring our property to another by a covenant; ſo, by a voluntary ſubmiſſion, a perſon may convey

to another, who accepts of the renunciation, the natural right he had of difpofing of his liberty and natural ftrength.

VI. It muft therefore be agreed, that fovereignty refides originally in the people, and in each individual with regard to himfelf; and that it is the transferring and uniting the feveral rights of individuals in the perfon of the fovereign, that conftitutes him fuch, and really produces fovereignty. It is beyond all difpute, for example, that when the Romans chofe Romulus and Numa for their kings, they muft have conferred upon them, by this very act, the fovereignty, which thofe princes were not poffeffed of before, and to which they had certainly no other right than what was derived from the election of the people.

VII. Neverthelefs, though it be evident, that the immediate original of fovereignty is owing to human covenants, yet nothing can hinder us from affirming, with good ground, that it is of divine as well as human right.

VIII. And indeed, right reafon having made it plainly appear, after the multiplication of mankind, that the eftablifhment of civil focieties and of a fupreme authority, was abfolutely neceffary for the order, tranquillity, and prefervation of the fpecies, it is as convincing a proof that this inftitution is agreeable to the defigns of Providence, as if God himfelf had declared it to mankind by a pofitive revelation. And fince God is effentially fond of order, he is doubtlefs willing that there fhould be a fupreme

authority upon earth, which alone is capable of procuring and ſupporting that order amongſt mankind, by enforcing the obſervance of the laws of nature.

IX. There is a beautiful paſſage of Cicero's to this purpoſe *. *Nothing is more agreeable to the ſupreme Deity, that governs this univerſe, than civil ſocieties lawfully eſtabliſhed.*

X. When therefore we give to ſovereigns the title of God's vicegerents upon earth, this does not imply that they derive their authority immediately from God; but it ſignifies only, that by means of the power lodged in their hands, and with which the people have inveſted them, they maintain, agreeably to the views of the Deity, both order and peace, and thus procure the felicity of mankind.

XI. But if theſe magnificent titles add a conſiderable luſtre to ſovereignty, and render it more reſpectable, they afford likewiſe, at the ſame time, an excellent leſſon to princes. For they cannot deſerve the title of God's vicegerents upon earth, but inaſmuch as they make uſe of their authority, purſuant to the views and purpoſes for which they were intruſted with it, and agreeably to the intention of the Deity, that is, for the happineſs of the people, by uſing all their endeavours to inſpire them with virtuous principles.

* *Nihil eſt illi principi Deo, qui omnem hunc mundum regit, quod quidem in terris fiat acceptius, quam conſilia cætuſque hominum jure ſociati, quæ civitates appellantur.* Somn. Scip. *cap.* 3.

XII. This

XII. This, without doubt, is ſufficient to make us look upon the original of government as ſacred, and to induce ſubjects to ſhew ſubmiſſion and reſpect to the perſon of the ſovereign. But there are political writers who carry the thing further, and maintain that it is God who confers immediately the ſupreme power on princes, without any intervention or concurrence of man.

XIII. For this purpoſe, they make a diſtinction betwixt the cauſe of the ſtate, and the cauſe of the ſovereignty. They confeſs indeed that ſtates are formed by covenants, but they inſiſt that God himſelf is the immediate cauſe of the ſovereignty. According to their notions, the people, who chuſe to themſelves a king, do not, by this act, confer the ſupreme authority upon him, they only point out the perſon whom heaven is to entruſt with it. Thus the conſent of the people to the dominion of one or more perſons, may be conſidered as a channel, through which the ſupreme authority flows, but is not its real ſource.

XIV. The principal argument which theſe writers adopt, is, that as neither each individual amongſt a number of free and independent people, nor the whole collective multitude, are in any wiſe poſſeſſed of the ſupreme authority, they cannot confer it on the prince. But this argument proves nothing: it is true that neither each member of the ſociety, nor the whole multitude collected, are formally inveſted with the ſupreme authority, ſuch as we behold it in the ſovereign, but it is ſufficient that they poſſeſs it virtually,

tually, that is, that they have within themſelves all that is neceſſary to enable them, by the concurrence of their free will and conſent, to produce it in the ſovereign.

XV. Since every individual has a natural right of diſpoſing of his natural freedom according as he thinks proper, why ſhould he not have a power of transferring to another that right which he has of directing himſelf? Now is it not manifeſt, that if all the members of this ſociety agree to transfer this right to one of their fellow-members, this ceſſion will be the neareſt and immediate cauſe of ſovereignty? It is therefore evident, that there are, in each individual, the ſeeds, as it were, of the ſupreme power. The caſe is here very near the ſame as in that of ſeveral voices, collected together, which, by their union, produce a harmony, that was not to be found ſeparately in each.

XVI. But it will be here objected, that the ſcripture itſelf ſays, that every man ought to be ſubject to the ſupreme powers, becauſe they are eſtabliſhed by God *. I anſwer, with Grotius, that men have eſtabliſhed civil ſocieties, not in conſequence of a divine ordinance, but of their voluntary motion, induced by the experience they had had of the incapacity which ſeparate families were under, of defending themſelves againſt the inſults and attacks of human violence. From thence (he adds) ariſes the civil power, which St. Peter, for this

* Rom. xiii.

reaſon,

reaſon, calls a *human* power *, though in other parts of ſcripture it bears the name of a divine inſtitution †, becauſe God has approved of it as an eſtabliſhment uſeful to mankind ‡.

XVII. The other arguments, in favour of the opinion we have been here refuting, do not even deſerve our notice. In general, it may be obſerved, that never were more wretched reaſons produced upon this ſubject, as the reader may be eaſily convinced by reading Puffendorf on the law of nature and nations, who, in the chapter correſponding to this, gives theſe arguments at length, and fully refutes them ‖.

XVIII. Let us therefore conclude, that the opinion of thoſe, who pretend that God is the immediate cauſe of ſovereignty, has no other foundation than that of adulation and flattery, by which, in order to render the authority of ſovereigns more abſolute, they have attempted to render it independent of all human compact, and dependent only on God. But were we even to grant, that princes hold their authority immediately of God, yet the conſequences, which ſome political writers want to infer, could not be drawn from this principle.

XIX. For ſince it is moſt certain, that God could never entruſt princes with this ſupreme authority,

* Ep. i. chap. ii. ver. 13. † Rom. xiii. 1.

‡ Grotius of the right of war and peace, book i. chap. iv. § 7, 12. No. 3. See above, No. 7, and following.

‖ See the Law of nature and nations, book vii. chap. iii.

but

but for the good of ſociety in general, as well as of individuals, the exerciſe of this power muſt neceſſarily be limited by the very intention which the Deity had, in conferring it on the ſovereign; inſomuch that the people would ſtill have the ſame right of refuſing to obey a prince, who, inſtead of concurring with the views of the Deity, would, on the contrary, endeavour to croſs and defeat them, by rendering his people miſerable, as we ſhall prove more particularly hereafter.

CHAP. VII.

Of the eſſential characters of ſovereignty, its modifications, extent, and limits.

1°. *Of the characteriſtics of ſovereignty.*

I. SOvereignty we have defined to be a right of commanding in the laſt reſort in civil ſociety, which right the members of this ſociety have conferred upon ſome perſon, with a view of maintaining order and ſecurity in the commonwealth. This definition ſhews us the principal characteriſtics of the power that governs the ſtate, and this is what it will be proper to explain here in a more particular manner.

II. The firſt characteriſtic, and that from which all the others flow, is its being a ſupreme and independent power, that is, a power that judges in the laſt reſort of whatever is ſuſceptible of human direction, and relates to the welfare and advantage

of ſociety; inſomuch that this power acknowledges no other ſuperior power on earth.

III. It muſt be obſerved however, that when we ſay the civil power is, of its own nature, ſupreme and independent, we do not mean thereby, that it does not depend, in regard to its original, on the human will *: all that we would have underſtood is, that, when once this power is eſtabliſhed, it acknowledges no other upon earth, ſuperior or equal to it, and conſequently that whatever it ordains in the plenitude of its power, cannot be reverſed by any other human will, as ſuperior to it.

IV. That in every government there ſhould be ſuch a ſupreme power, is a point abſolutely neceſſary; the very nature of the thing requires it, otherwiſe it is impoſſible for it to ſubſiſt. For ſince powers cannot be multiplied to infinity, we muſt neceſſarily ſtop at ſome degree of authority ſuperior to all other: and let the form of government be what it will, monarchical, ariſtocratical, democratical, or mixt, we muſt always ſubmit to a ſupreme deciſion; ſince it implies a contradiction to ſay, that there is any perſon above him, who holds the higheſt rank in the ſame order of beings.

V. A ſecond characteriſtic, which is a conſequence of the former, is that the ſovereign, as ſuch, is not accountable to any perſon upon earth for his conduct, nor liable to any puniſhment from man; for both ſuppoſe a ſuperior.

* See above, chap. iv. &c. where we have proved the contrary.

VI. There

VI. There are two ways of being accountable. One as to a ſuperior, who has a right of reverſing what has been done, if he does not find it to his liking, and even of inflicting ſome puniſhment, and this is inconſiſtent with the idea of a ſovereign.

The other as to an equal, whoſe approbation we are deſirous of having; and in this ſenſe a ſovereign may be accountable, without any abſurdity. And even they who have a right idea of honour, endeavour by ſuch means to acquire the approbation and eſteem of mankind, by letting all the world ſee, that they act with prudence and integrity: but this does not imply any dependence.

VII. I ſaid that the ſovereign, as ſuch, was neither accountable nor puniſhable; that is, ſo long as he continues really a ſovereign, and has not forfeited his right. For it is paſt all doubt, that if the ſovereign, utterly forgetful of the end for which he was entruſted with the ſovereignty, applied it to a quite contrary purpoſe, and thus became an enemy to the ſtate; the ſovereignty returns (*ipſo facto*) to the nation, who, in that caſe, can act towards the perſon, who was their ſovereign, in the manner they think moſt agreeable to their ſecurity and intereſts. For, whatever notion we may entertain of ſovereignty, no man, in his ſenſes, will pretend to ſay, that it is an undoubted title to follow the impulſe of our irregular paſſions with impunity, and thus to become an enemy to ſociety.

VIII. A third characteriſtic eſſential to ſovereignty, conſidered in itſelf, is, that the ſovereign, as ſuch, be

above

above all human or civil law. I ſay, all human law; for there is no doubt but the ſovereign is ſubject to the divine laws, whether natural or poſitive.

Regum timendorum in proprios greges,
Reges in ipſos imperium eſt Jovis.

HOR. lib. 3. Od. 1.

IX. But with regard to laws merely human, as their whole force and obligation ultimately depends on the will of the ſovereign, they cannot, with any propriety of ſpeech, be ſaid to be obligatory in reſpect to him: for obligation neceſſarily ſuppoſeth two perſons, a ſuperior and an inferior.

X. And yet natural equity requires ſometimes, that the prince ſhould conform to his own laws, to the end that his ſubjects may be more effectually induced to obſerve them. This is extremely well expreſſed in theſe verſes of Claudian *.

In commune jubes ſi quid, cenſeſve tenendum,
Primus juſſa ſubi; tunc obſervantior æqui
Fit populus, nec ferre negat, cum viderit ipſum
Auctorem parêre ſibi: componitor orbis
Regis ad exemplum; nec ſic inflectere ſenſus
Humanos edicta valent, ut vita regentis.

Would you your public laws ſhould ſacred ſtand,
Lead firſt the way, and act what you command.
The crowd grow mild and tractable to ſee
The author governed by his own decree.
The world turns round, as its great matter draws,
And princes lives bind ſtronger than their laws.

* De IV. Conſul. Honor. ver. 296, & ſeq.

XI. To

XI. To proceed; in treating here of ſovereignty, we ſuppoſe that it is really and abſolutely ſuch in its own nature, and that the eſtabliſhment of civil laws ultimately depends on the ſole will of the perſon who enjoys the honours and title of ſovereign, inſomuch that his authority, in this reſpect, cannot be limited: otherwiſe this ſuperiority of the prince above the laws is not applicable to him in the full extent in which we have given it him.

XII. This ſovereignty, ſuch as we have now repreſented it, reſided originally in the people. But when once the people have transferred their right to a ſovereign, they cannot, without contradiction, be ſuppoſed to continue ſtill maſters of it.

XIII. Hence the diſtinction which ſome political writers make between *real ſovereignty*, which always reſides in the people, and *actual ſovereignty*, which belongs to the king, is equally abſurd and dangerous. For it is ridiculous to pretend, that after the people have conferred the ſupreme authority on the king, they ſhould ſtill continue in poſſeſſion of that very authority, ſuperior to the king himſelf.

XIV. We muſt therefore obſerve here a juſt medium, and eſtabliſh principles that neither favour tyranny, nor the ſpirit of mutiny and rebellion.

1°. It is certain, that ſo ſoon as a people ſubmit to a king, really ſuch, they have no longer the ſupreme power.

2°. But it does not follow, from the people's having conferred the ſupreme power in ſuch a manner, that they have reſerved to themſelves in no caſe the right of reſuming it.

3°. This

3°. This reſervation is ſometimes explicit; but there is always a tacit one, the effect of which diſcloſes itſelf, when the perſon, entruſted with the ſupreme authority, perverts it to an uſe directly contrary to the end for which it was conferred upon him, as will better appear hereafter.

XV. But though it be abſolutely neceſſary, that there ſhould be a ſupreme and independent authority in the ſtate, there is nevertheleſs ſome difference, eſpecially in monarchies and ariſtocracies, with regard to the manner in which thoſe who are entruſted with this power, exerciſe it. In ſome ſtates the prince governs as he thinks proper; in others, he is obliged to follow ſome fixt and conſtant rules, from which he is not allowed to deviate; this is what I call the modifications of ſovereignty, and from thence ariſes the diſtinction of abſolute and limited ſovereignty.

2°. *Of abſolute ſovereignty.*

XVI. Abſolute ſovereignty is therefore nothing elſe but the right of governing the ſtate as the prince thinks proper, according as the preſent ſituation of affairs ſeems to require, and without being obliged to conſult any perſon whatever, or to follow any fixt and perpetual rules.

XVII. Upon this head we have ſeveral important reflections to make.

1°. The word *abſolute power* is generally very odious to republicans; and I muſt confeſs, that when it is miſunderſtood, it is apt to make the moſt dangerous impreſſion on the minds of princes, eſpecially in the mouths of flatterers.

2°. In order to form a juſt idea of it, we muſt trace it to its principle. In the ſtate of nature, every man has an abſolute right to act after what manner he thinks moſt conducive to his happineſs, and without being obliged to conſult any perſon whatever, provided however that he does nothing contrary to the laws of nature: conſequently when a multitude of men unite together, in order to form a ſtate, this body hath the ſame liberty in regard to matters in which the public good is concerned.

3°. When therefore the whole body of the people confer the ſovereignty upon a prince, with this extent and abſolute power, which originally reſided in themſelves, and without adding any particular limitation to it, we call that ſovereignty abſolute.

4°. Things being thus conſtituted, we muſt not confound an abſolute power with an arbitrary, deſpotic, and unlimited authority. For, from what we have here advanced concerning the original and nature of abſolute ſovereignty, it manifeſtly follows, that it is limited, from its very nature, by the intention of thoſe who conferred it on the ſovereign, and by the very laws of God. This is what we muſt explain more at large.

XVIII. The end which mankind propoſed to themſelves in renouncing their natural independance, and eſtabliſhing government and ſovereignty, was doubtleſs to redreſs the evils which they laboured under, and to ſecure their happineſs. If ſo, how is it poſſible to conceive, that thoſe, who, with this view, granted an abſolute power to the ſovereign, ſhould have intended to give him an arbitrary and unlimited autho-

rity, ſo as to intitle him to gratify his caprice and paſſions, to the prejudice of the life, property, and liberty of the ſubject? on the contrary, we have ſhewn above, that the civil ſtate muſt neceſſarily empower the ſubjects to inſiſt upon the ſovereign's uſing his authority for their advantage, and according to the purpoſes for which he was entruſted with it.

XIX. It muſt therefore be acknowledged, that it never was the intention of the people to confer abſolute ſovereignty upon a prince, but with this expreſs condition, that the public good ſhould be the ſupreme law to direct him; conſequently ſo long as the prince acts with this view, he is authorized by the people; but, on the contrary, if he makes uſe of his power merely to ruin and deſtroy his ſubjects, he acts intirely of his own head, and not in virtue of the power with which he was entruſted by the people.

XX. Still further, the very nature of the thing does not allow abſolute power to be extended beyond the bounds of public utility; for abſolute ſovereignty cannot confer a right upon the ſovereign, which the people had not originally in themſelves. Now before the eſtabliſhment of civil ſociety, ſurely no man had a power of injuring either himſelf or others; conſequently abſolute power cannot give the ſovereign a right to hurt and abuſe his ſubjects.

XXI. In the ſtate of nature every man was abſolute maſter of his own perſon and actions, provided he confined himſelf within the limits of the law of

 nature.

nature. Abſolute power is formed only by the union of all the rights of individuals in the perſon of the ſovereign; of courſe the abſolute power of the ſovereign is confined within the ſame bounds, as thoſe by which the abſolute power of individuals was originally limited.

XXII. But I go ſtill further, and affirm that, ſuppoſing even a nation had been really willing to grant their ſovereign an arbitrary and unlimited power, this conceſſion would of itſelf be void and of no effect.

XXIII. No man can diveſt himſelf ſo far of his liberty as to ſubmit to an arbitrary prince, who is to treat him abſolutely according to his fancy. This would be renouncing his own life, which he is not maſter of; it would be renouncing his duty, which is never permitted: and if thus it be with regard to an individual who ſhould make himſelf a ſlave, much leſs hath an entire nation that power, which is not to be found in any of its members.

XXIV. By this it appears moſt evident, that all ſovereignty, how abſolute ſoever we ſuppoſe it, hath its limits; and that it can never imply an arbitrary power in the prince of doing whatever he pleaſes, without any other rule or reaſon than his own deſpotic will.

XXV. For how indeed ſhould we attribute any ſuch power to the creature, when it is not to be found in the ſupreme Being himſelf? His abſolute dominion

nion is not founded on a blind will; his ſovereign will is always determined by the immutable rules of wiſdom, juſtice, and beneficence.

XXVI. In ſhort, the right of commanding, or ſovereignty, ought always to be eſtabliſhed ultimately on a power of doing good, otherwiſe it cannot be productive of a real obligation; for reaſon cannot approve or ſubmit to it; and this is what diſtinguiſhes empire and ſovereignty from violence and tyranny. Such are the ideas we ought to form of abſolute ſovereignty.

3°. *Of limited ſovereignty.*

XXVII. But although abſolute power, conſidered in itſelf, and ſuch as we have now repreſented it, implies nothing odious or unlawful, and, in that ſenſe, people may confer it upon the ſovereign; yet we muſt allow, that the experience of all ages has informed mankind, that this is not the form of government which ſuits them beſt, nor the fitteſt for procuring them a ſtate of tranquillity and happineſs.

XXVIII. Whatever diſtance there may be between the ſubjects and the ſovereign, in whatſoever degree of elevation the latter may be placed above the reſt, ſtill he is a human creature like themſelves; their ſouls are all caſt, as it were, in the ſame mould, they are all ſubject to the ſame prejudices, and ſuſceptible of the ſame paſſions.

XXIX. Again, the very ſtation, which ſovereigns, occupy, expoſes them to temptations, unknown to private people. The generality of princes have neither virtue nor courage ſufficient to moderate their paſſions, when they find they may do whatever they liſt. The people have therefore great reaſon to fear, that an unlimited authority will turn out to their prejudice, and that if they do not reſerve ſome ſecurity to themſelves, againſt the ſovereign's abuſing it, he will ſome time or other abuſe it.

XXX. It is theſe reflections, juſtified by experience, that have induced moſt, and thoſe the wiſeſt, nations, to ſet bounds to the power of their ſovereigns, and to preſcribe the manner in which the latter are to govern; and this has produced what is called limited ſovereignty.

XXXI. But though this limitation of the ſupreme power be advantageous to the people, it does no injury to the princes themſelves; nay it may rather be ſaid, that it turns out to their advantage, and forms the greateſt ſecurity to their authority.

XXXII. It does no injury to princes; for if they could not be ſatisfied with a limited authority, their buſineſs was to refuſe the crown; and when once they have accepted of it upon theſe conditions, they are no longer at liberty to endeavour afterwards to break through them, or to ſtrive to render themſelves abſolute.

XXXIII. It is rather advantageous to princes, becauſe thoſe who are inveſted with abſolute power, and

and are deſirous of diſcharging their duty, are obliged to a far greater vigilance and circumſpection, and expoſed to more fatigue, than thoſe who have their taſk, as it were, marked out to them, and are not allowed to deviate from certain rules.

XXXIV. In fine, this limitation of ſovereignty forms the greateſt ſecurity to the authority of princes; for, as they are leſs expoſed hereby to temptation, they avoid that popular fury, which is ſometimes diſcharged on thoſe, who, having been inveſted with abſolute authority, abuſe it to the public prejudice. Abſolute power eaſily degenerates into deſpotiſm, and deſpotiſm paves the way for the greateſt and moſt fatal revolutions that can happen to ſovereigns. This is what the experience of all ages has verified: it is therefore a happy incapacity in kings not to be able to act contrary to the laws of their country.

XXXV. Let us therefore conclude, that it intirely depends upon a free people, to inveſt the ſovereigns, whom they place over their heads, with an authority either abſolute, or limited by certain laws, provided theſe laws contain nothing contrary to juſtice, nor to the end of government. Theſe regulations, by which the ſupreme authority is kept within bounds, are called, *The fundamental laws of the ſtate.*

4°. *Of fundamental laws.*

XXXVI. The fundamental laws of a ſtate, taken in their full extent, are not only the decrees by which the entire body of the nation determine the form of

government, and the manner of ſucceeding to the crown; but are likewiſe the covenants betwixt the people and the perſon on whom they confer the ſovereignty, which regulate the manner of governing, and by which the ſupreme authority is limited.

XXXVII. Theſe regulations are called fundamental laws, becauſe they are the baſis, as it were, and foundation of the ſtate, on which the ſtructure of the government is raiſed, and becauſe the people look upon thoſe regulations as their principal ſtrength and ſupport.

XXXVIII. The name of laws however has been given to theſe regulations in an improper and figurative ſenſe; for, properly ſpeaking, they are real covenants. But as thoſe covenants are obligatory between the contracting parties, they have the force of laws themſelves. Let us explain this more at large.

XXXIX. 1°. I obſerve in the firſt place, that there is a kind of fundamental law, eſſential to all governments, even in thoſe ſtates where the moſt abſolute ſovereignty prevails. This law is that of the public good, from which the ſovereign can never depart, without being wanting in his duty; but this alone is not ſufficient to limit the ſovereignty.

XL. Hence thoſe promiſes, either tacit or expreſs, by which princes bind themſelves even by oath, when they come to the crown, of governing according to the laws of juſtice and equity, of conſulting the public good, of oppreſſing no man, of protecting the

the virtuous, and of punifhing evil doers, and the like, do not imply any limitation to their authority, nor any diminution of their abfolute power. It is fufficient that the choice of the means for procuring the advantage of the ftate, and the method of putting them in practice, be left to the judgment and difpofal of the fovereign; otherwife the diftinction of abfolute and limited power would be utterly abolifhed.

XLI. 2°. But with regard to fundamental laws, properly fo called, they are only more particular precautions taken by the people, to oblige fovereigns more ftrongly to employ their authority, agreeably to the general rule of the public good. This may be done feveral ways; but ftill thefe limitations of the fovereignty have more or lefs force, according as the nation has taken more or lefs precautions, that they fhall have their due effect.

XLII. Hence, 1°. a nation may require of a fovereign, that he will engage, by a particular promife, not to make any new laws, nor to levy new impofts, to tax only fome particular things, to give places and employments only to a certain fet of people, and not to take any foreign troops into his pay, &c. Then indeed the fupreme authority is limited in thofe different refpects, infomuch that whatever the king attempts afterwards, contrary to the formal engagement he entered into, fhall be void and of no effect. But if there fhould happen to be an extraordinary cafe, in which the fovereign thought it conducive to the public good, to deviate from the fundamental laws,

laws, he is not allowed to do it of his own head, in contempt of his solemn engagement, but in that case he ought to consult the people themselves, or their representatives. Otherwise, under pretence of some necessity or utility, the sovereign might easily break his word, and frustrate the effect of the precautions taken by the nation to limit his power. And yet Puffendorf thinks otherwise *. But, for a still greater security of the performance of the engagements into which the sovereign entered, and which limit his power, it is proper to require explicitly of him, that he shall convene a general assembly of the people, or of their representatives, or of the nobility of the country, when any matters happen to fall under debate, which it was thought improper to leave to his decision. Or else the nation may previously establish a council, a senate, or parliament, without whose consent the prince shall be rendered incapable of acting in regard to things which the nation did not think fit to submit to his will.

XLIII. 2°. History informs us, that some nations have carried their precautions still further, by inserting, in plain terms, in their fundamental laws, a condition or clause, by which the king was declared to have forfeited his crown, if he broke through those laws. Puffendorf gives an example of this, taken from the oath of allegiance which the people of Aragon formerly made to their kings. *We, who have as much power as you, make you our king, upon condition that you maintain inviolably our rights and liberties, and not otherwise.*

* See the Law of nature and nations, book vii. chap. vi. § 10.

XLIV. It

XLIV. It is by ſuch precautions as theſe, that a nation really limits the authority ſhe confers on the ſovereign, and ſecures her liberty. For, as we have already obſerved, civil liberty ought to be accompanied not only with a right of inſiſting on the ſovereign's making a due uſe of his authority, but moreover with a moral certainty that this right ſhall have its effect. And the only way to render the people thus certain, is to uſe proper precautions againſt the abuſe of the ſovereign power, in ſuch a manner as theſe precautions ſhall not be eaſily eluded.

XLV. Beſides, we muſt obſerve, that theſe limitations of the ſovereign power do not render it defective, nor make any diminution in the ſupreme authority; for a prince, or a ſenate, who has been inveſted with the ſupreme power upon this footing, may exerciſe every act of it as well as in an abſolute monarchy. All the difference is, that in the latter the prince alone determines ultimately according to his private judgment; but in a limited monarchy, there is a certain aſſembly, who, in conjunction with the king, take cognizance of particular affairs, and whoſe conſent is a neceſſary condition, without which the king can determine nothing. But the wiſdom and virtue of good ſovereigns, are ſtrengthened by the concurring aſſiſtance of thoſe who have a ſhare in the authority. Princes always do what they incline to, when they incline to nothing but what is juſt and good; and they ought to eſteem themſelves happy in having it put out of their power to act otherwiſe.

XLVI. 3°. In a word, as the fundamental laws, which

which limit the ſovereign authority, are nothing elſe but the means which the people uſe to aſſure themſelves that the prince will not recede from the general law of the public good in the moſt important conjunctures, it cannot be ſaid that they render the ſovereignty imperfect or defective. For if we ſuppoſe a prince inveſted with abſolute authority, but at the ſame time bleſſed with ſo much wiſdom and virtue, that he will never, even in the moſt trifling caſe, deviate from the laws which the public good requires, and that all his determinations ſhall be ſubjected to this ſuperior rule, can we, for that reaſon, ſay, that his power is in the leaſt weakened or diminiſhed? No, certainly; for the precautions, which the people take againſt the weakneſs or the wickedneſs inſeparable from human nature, in limiting the power of their ſovereigns to hinder them from abuſing it, do not in the leaſt weaken or diminiſh the ſovereignty; but, on the contrary, they render it more perfect, by reducing the ſovereign to a neceſſity of doing good, and conſequently by putting him, as it were, out of a capacity of miſbehaving.

XLVII. Neither are we to believe that there are two diſtinct wills in a ſtate, whoſe ſovereignty is limited in the manner we have explained; for the ſtate wills or determines nothing but by the will of the king. Only it is to be obſerved, that when a condition ſtipulated happens to be broken, the king cannot decree at all, or at leaſt he muſt do ſo in vain in certain points; but he is not, for this reaſon, leſs a ſovereign than he was before. Becauſe a prince cannot do every thing according to his humour, it

does

does not follow from this, that he is not the fovereign. Sovereign and abfolute power ought not to be confounded; and, from what has been faid, it is evident, that the one may fubfift without the other.

XLVIII. 4°. Laftly, there is ftill another manner of limiting the authority of thofe to whom the fovereignty is committed; which is not to truft all the different rights included in the fovereignty to one fingle perfon, but to lodge them in feparate hands, or in different bodies, that they may modify or reftrain the fovereignty.

XLIX. For example, if we fuppofe that the body of the nation referves to itfelf the legiflative power, and that of creating the principal magiftrates; that it gives the king the military and executive powers, &c. and that it trufts to a fenate compofed of the principal men, the judiciary power, that of laying taxes, &c. it is eafily conceived, that this may be executed in different manners, in the choice of which prudence muft determine us.

L. If the government is eftablifhed on this footing, then, by the original compact of affociation, there is a kind of partition in the rights of the fovereignty, by a reciprocal contract or ftipulation between the different bodies of the ftate. This partition produces a balance of power, which places the different bodies of the ftate in fuch a mutual dependance, as retains every one, who has a fhare in the fovereign authority, within the bounds which the law prefcribes to them; by which means the public liberty is fecured.

For

For example, the regal authority is balanced by the power of the people, and a third order ſerves as a counterbalance to the two former, to keep them always in an equilibrium, and hinder the one from ſubverting the other. And this is ſufficient, concerning the diſtinction between abſolute and limited ſovereignty.

5°. *Of patrimonial, and uſufructuary kingdoms.*

LI. In order to finiſh this chapter, let us obſerve, that there is ſtill another accidental difference in the manner of poſſeſſing the ſovereignty, eſpecially with reſpect to kings. Some are maſters of their crown in the way of patrimony, which they are permitted to ſhare, transfer, or alienate to whom they have a mind; in a word, of which they can diſpoſe as they think proper: others hold the ſovereignty in the way of *uſe* only, not of property; and this either for themſelves only, or with the power of tranſmitting it to their deſcendants according to the laws eſtabliſhed for the ſucceſſion. It is upon this foundation that the learned diſtinguiſh kingdoms into patrimonial, and uſufructuary or not patrimonial.

LII. We ſhall here add, that thoſe kings poſſeſs the crown in full property, who have acquired the ſovereignty by right of conqueſt; or thoſe to whom a people have delivered themſelves up without reſerve, in order to avoid a greater evil; but that, on the contrary, thoſe kings, who have been eſtabliſhed by a free conſent of the people, poſſeſs the crown in the way of *uſe* only. This is the manner in

which

which Grotius explains this diſtinction, in which he has been followed by Puffendorf, and by moſt of the other commentators or writers *.

LIII. On this we may make the following remarks.

1°. There is no reaſon to hinder the ſovereign power, as well as every other right, from being alienated or transferred. In this there is nothing contrary to the nature of the thing; and if the agreement between the prince and the people bears that the prince ſhall have full right to diſpoſe of the crown as he ſhall think proper, this will be what we call a patrimonial kingdom.

2°. But examples of ſuch agreements are very rare; and we hardly find any other except that of the Egyptians with their king, mentioned in Geneſis †.

3°. The ſovereign power, however abſolute, is not, of itſelf, inveſted with the right of property, nor conſequently with the power of alienation. Theſe two ideas are intirely diſtinct, and have no neceſſary connection with each other.

4°. It is true, ſome alledge a great many examples of alienations made in all ages by ſovereigns: but either thoſe alienations had no effect; or they were made with an expreſs or tacit conſent of the people; or, laſtly, they were founded on no other title but that of force.

* See Grotius on the right of war and peace, lib. i. chap. iii. § 11 and 12, &c. Puffendorf on the law of nature and nations, lib. vii. chap. vi. § 14, 15.

† Chap. xlvii. ver. 18, &c.

5°. Let us therefore take it for an inconteſtable principle, that, in dubious caſes, every kingdom ought to be judged not patrimonial, ſo long as it cannot be proved, that a people ſubmitted themſelves on that footing to a ſovereign.

CHAP. VIII.

Of the parts of ſovereignty, or of the different eſſential rights which it includes.

I. IN order to finiſh this firſt part, nothing remains but to treat of the different parts of ſovereignty. We may conſider ſovereignty as an aſſemblage of various rights and different powers, which, though diſtinct, are nevertheleſs conferred for the ſame end; that is to ſay, for the good of the ſociety, and which are all eſſentially neceſſary for this ſame end: theſe different rights and powers are called the eſſential parts of ſovereignty.

II. To be convinced that theſe are the parts of ſovereignty, we need only attend to its nature and end.

The end of ſovereignty is the preſervation, the tranquillity, and the happineſs of the ſtate, as well within itſelf, as with reſpect to its intereſts abroad; ſo that ſovereignty muſt include every thing that is eſſentially neceſſary for procuring this twofold end.

III. 1°. As this is the caſe, the firſt part of ſovereignty, and that which is, as it were, the foundation

tion of all the reſt, is the legiſlative power, by virtue of which the ſovereign eſtabliſhes general and perpetual rules, which are called *laws*. By theſe means every one knows how he ought to conduct himſelf for the preſervation of peace and good order, what ſhare he retains of his natural liberty, and how he ought to exert his rights, ſo as not to diſturb the public tranquillity.

It is by means of laws that we contrive ſo nobly to unite the prodigious diverſity of ſentiments and inclinations obſervable among men, and eſtabliſh that concert and harmony ſo eſſential to ſociety, ſince they direct the different actions of individuals to the general good and advantage. But it muſt be ſuppoſed that the laws of the ſovereign contain nothing oppoſite to the divine laws, whether natural or revealed.

IV. 2°. To the legiſlative we muſt join the coercive power, that is to ſay, the right of ordaining puniſhments againſt thoſe who moleſt the community by their irregularities, and the power of actually inflicting them. Without this power, the eſtabliſhment of civil ſociety and of laws, would be abſolutely uſeleſs, and we could not propoſe to live in peace and ſafety. But that the dread of puniſhments may make a ſufficient impreſſion on the minds of the people, the right of puniſhing muſt extend to the power of inflicting the greateſt of natural evils, which is death; otherwiſe the dread of puniſhment would not be always capable of counter-balancing the force of pleaſure, and the impulſe of paſſion. In a word, the ſubjects muſt have a ſtronger intereſt to obſerve, than

than to violate the law. Thus the vindicative power is certainly the higheſt degree of authority which one man can hold over another.

V. 3°. Further, it is neceſſary for the preſervation of peace, that the ſovereign ſhould have a right to take cognizance of the different quarrels between the ſubjects, and to decide them in the laſt reſort; as alſo to examine the accuſations laid againſt any perſon, in order to abſolve or puniſh him by his ſentence, conformably to the laws: this is what we call *juriſdiction*, or the *judiciary power*. To this we muſt alſo refer the right of pardoning criminals when the public utility requires it.

VI. 4°. Beſides, as the ways of thinking, or opinions embraced by the ſubject, may have a very great influence on the welfare of the commonwealth, it is neceſſary that ſovereignty ſhould include a right of examining the doctrines taught in the ſtate, ſo that nothing may be publicly advanced but what is conformable to truth, and conducive to the advantage of ſociety. Hence it is, that it belongs to the ſovereign to eſtabliſh profeſſors, academies, and public ſchools; and the ſupreme power, in matters of religion, is as much his right, as the nature of the thing will permit. After having ſecured the public repoſe at home, it is neceſſary to guard the people againſt ſtrangers, and to procure to them, by leagues with foreign ſtates, all the neceſſary aids and advantages, whether in the ſeaſons of peace or war.

VII. 5°. In conſequence of this, the ſovereign

ought to be invefted with the power of affembling and arming his fubjects, or of raifing other troops in as great a number as is neceffary for the fafety and defence of the ftate, and of making peace when he fhall judge proper.

VIII. 6°. Hence alfo arifes the right of contracting public engagements, of making treaties and alliances with foreign ftates, and of obliging all the fubjects to obferve them.

IX. 7°. But as the public affairs, both at home and abroad, cannot be conducted by a fingle perfon, and as the fovereign is incapable of difcharging all thefe duties, he muft certainly have a power to create minifters and fubordinate magiftrates, whofe bufinefs it is to take care of the public welfare, and tranfact the affairs of the ftate in his name, and under his authority. The fovereign, who has entrufted them with thofe employments, may, and ought to compel them to difcharge them, and oblige them to give an exact account of their adminiftration.

X. 8°. Laftly, the affairs of the ftate neceffarily demand, both in times of peace and war, confiderable expences, which the fovereign himfelf neither can, nor ought to furnifh. He muft therefore have a right of referving to himfelf a part of the goods or products of the country, or of obliging the fubjects to contribute either by their purfe, or by their labour and perfonal fervice, as much as the public neceffities demand, and this is called the *right of fubfidies or taxes*.

To this part of the ſovereignty we may refer the prerogative of coining money, the right of hunting, with that of fiſhing, &c. Theſe are the principal parts eſſential to ſovereignty.

The END *of the* FIRST PART.

THE PRINCIPLES OF POLITIC LAW.

PART II.

In which are explained the different forms of government, the ways of acquiring or losing sovereignty, and the reciprocal duties of sovereigns and subjects.

CHAP. I.

Of the various forms of government.

I. NATIONS have been sensible, that it was essential to their happiness and safety, to establish some form of government. They have all agreed in this point, that it was necessary to institute a supreme power, to whose will every thing should be ultimately submitted.

II. But, the more the establishment of a supreme power is necessary, the more important is the choice

of the perſon inveſted with that high dignity. Hence it is that, in regard to this article, nations are extremely divided, having entruſted the ſupreme power in different hands, according as they judged it moſt conducive to their ſafety and happineſs; neither have they taken this ſtep without making ſeveral ſyſtems and reſtrictions, which may vary greatly. This is the origin of the different forms of government.

III. There are therefore various forms of government, according to the different ſubjects in whom the ſovereignty immediately reſides, and according as it is inherent either in a ſingle perſon, or in a ſingle aſſembly, more or leſs compounded: and this is what forms the conſtitution of the ſtate.

IV. Theſe different forms of government may be reduced to two general claſſes, namely, to the ſimple forms, or to thoſe which are compounded or mixed.

V. There are three ſimple forms of government; Democracy, Ariſtocracy, and Monarchy.

VI. Some nations, more diffident than others, have placed the ſovereign power in the multitude itſelf, that is to ſay, in the heads of families aſſembled and met in council, and ſuch governments are called Popular or Democratic.

VII. Other nations of a bolder turn, paſſing to the oppoſite extreme, have eſtabliſhed Monarchy,

or

or the government of a ſingle man. Thus Monarchy is a ſtate in which the ſupreme power, and all the rights eſſential to it, reſide in a ſingle perſon, who is called *King*, *Monarch*, or *Emperor*.

VIII. Others have kept a due medium between thoſe two extremes, and lodged the whole ſovereign authority in a council compoſed of ſelect members, and this is termed an Ariſtocracy, or the government of the Nobles.

IX. Laſtly, other nations have been perſuaded, that it was neceſſary, by a mixture of the ſimple forms, to eſtabliſh a compound government, and, making a diviſion of the ſovereignty, to entruſt the different parts of it into different hands; to temper, for example, Monarchy with Ariſtocracy; and at the ſame time to give the people a ſhare in the ſovereignty: this may be executed different ways.

X. In order to have a more particular knowledge of the nature of theſe different forms of government, we muſt obſerve, that as in Democracies the ſovereign is a moral perſon, formed by the re-union of all the heads of families into a ſingle will, there are three things abſolutely neceſſary for the conſtitution of this form of government.

1°. That there be a certain place, and regulated times for deliberating in common on the public affairs; the members of the ſovereign council might aſſemble at different times, or places, whence factions

would arife, which would interrupt the union effential to the ftate.

2°. It muft be eftablifhed for a rule, that the plurality of fuffrages fhall pafs for the will of the whole; otherwife no affair could be determined, it being impoffible that a great number of people fhould be always of the fame opinion. We muft therefore efteem it the effential quality of a moral body, that the refolution of the majority fhall pafs for the will of the whole.

3°. Laftly, it is effential that magiftrates fhould be appointed to convene the people in extraordinary cafes, to difpatch ordinary affairs, in their name, and to fee that the decrees of the affembly be executed; for fince the fovereign council cannot always fit, it is evident that it cannot take the direction of every thing itfelf.

XI. With regard to Ariftocracies, fince the fovereignty refides in a council or fenate, compofed of the principal men of the nation, it is abfolutely neceffary that the conditions effential to the conftitution of a Democracy, and which we have above mentioned, fhould alfo concur to eftablifh an Ariftocracy.

XII. Further, Ariftocracy may be of two kinds, either by birth and hereditary, or elective. The Ariftocracy by birth, and hereditary, is that which is confined to a certain number of families, to which birth alone gives right, and which paffes from parents to their children, without any choice, and to the

exclufion

exclusion of all others. On the contrary, the elective Aristocracy is that in which a person arrives at the government by election only, and without receiving any right from birth.

XIII. In a word, it may be equally observed of Aristocracies and Democracies, that, whether in a popular state, or in a government of the nobles, every citizen, or every member of the supreme council, has not the supreme power, nor even a part of it; but this power resides either in the general assembly of the people, convened according to the laws, or in the council of the nobles; for it is one thing to have a share in the sovereignty, and another to have the right of suffrage in an assembly invested with the sovereign power.

XIV. As to Monarchy, it is established when the whole body of the people confer the sovereign power on a single person, which is done by an agreement betwixt the king and his subjects, as we have before explained.

XV. There is therefore this essential difference between Monarchy and the two other forms of government, that, in Democracies and Aristocracies, the actual exercise of the sovereign authority depends on the concurrence of certain circumstances of time and place; whereas in a Monarchy, at least when it is simple and absolute, the prince can give his orders at all times, and in all places: *It is Rome wherever the Emperor resides:*

XVI. Ano-

XVI. Another remark, which very naturally occurs on this occaſion, is, that in a Monarchy, when the king orders any thing contrary to juſtice and equity, he is certainly to blame, becauſe in him the civil and natural wills are the ſame thing. But when the aſſembly of the people, or a ſenate, form an unjuſt reſolution, only thoſe citizens or ſenators, who carried the point, render themſelves really accountable, and not thoſe who were of the oppoſite ſentiment. Let this ſuffice for the ſimple forms of government.

XVII. As to mixed or compound governments, they are eſtabliſhed, as we have obſerved, by the concurrence of the three ſimple forms, or only of two; when, for example, the king, the nobles, and the people, or only the two latter, ſhare the different parts of the ſovereignty between them, ſo that one adminiſters ſome parts of it, and the others the remainder. This mixture may be made various ways, as we obſerve in moſt republics.

XVIII. It is true, to conſider ſovereignty in itſelf, and in the height of plenitude and perfection, all the rights, which it includes, ought to belong to a ſingle perſon, or to one body, without any partition; ſo that there be but one ſupreme will to govern the ſubject. There cannot, properly ſpeaking, be ſeveral ſovereigns in a ſtate, who ſhall act as they pleaſe, independently of each other. This is morally impoſſible, and beſides would manifeſtly tend to the ruin and deſtruction of ſociety.

XIX. But

XIX. But this union of the ſupreme power does not hinder the whole body of the nation, in whom this power originally reſides, from regulating the government by a fundamental law, in ſuch a manner as to commit the exerciſe of the different parts of the ſupreme power to different perſons or bodies, who may act independently of each other, in regard to the rights committed to them, but ſtill ſubordinate to the laws from which thoſe rights are derived.

XX. And provided the fundamental laws, which eſtabliſh this ſpecies of partition in the ſovereignty, regulate the reſpective limits of the different branches of the legiſlature, ſo that we may eaſily ſee the extent of their juriſdiction; this partition produces neither a plurality of ſovereigns, nor an oppoſition between them, nor any irregularity in the government.

XXI. In a word, in this caſe there is, properly ſpeaking, but one ſovereign, who in himſelf is poſſeſſed of the fulneſs of power. There is but one ſupreme will. This ſovereign is the body of the people, formed by the union of all the orders of the ſtate; and this ſupreme will is the very law, by which the whole body of the nation makes its reſolutions known.

XXII. They, who thus ſhare the ſovereignty among them, are properly no more than the executors of the law, ſince it is from the law itſelf that they hold their power. And as theſe fundamental laws

laws are real covenants, or what the civilians call *pacta conventa*, between the different orders of the republic *, by which they mutually ſtipulate, that each ſhall have ſuch a particular part of the ſovereignty, and that this ſhall eſtabliſh the form of government, it is evident that, by theſe means, each of the contracting parties acquires a right not only of exerciſing the power granted to it, but alſo of preſerving that original right.

XXIII. Such party cannot even be diveſted of its right in ſpite of itſelf, and by the will of the reſt, ſo long at leaſt as it conducts itſelf in a manner conformable to the laws, and not manifeſtly oppoſite to the public welfare.

XXIV. In a word, the conſtitution of thoſe governments can be changed only in the ſame manner, and by the ſame methods, by which it was eſtabliſhed, that is to ſay, by the unanimous concurrence of all the contracting parties who have fixed the form of government by the original contract.

XXV. This conſtitution of the ſtate by no means deſtroys the union of a moral body compoſed of ſeveral perſons, or of ſeveral bodies, really diſtinct in themſelves, but joined by a fundamental law in a mutual engagement.

XXVI. From what has been ſaid on the nature of mixed or compound governments it follows, that in all ſuch ſtates, the ſovereignty is limited; for as

* See part i. chap. vii. No. 35, &c.

the different branches are not committed to a ſingle perſon, but lodged in different hands, the power of thoſe, who have a ſhare in the government, is thereby reſtrained; and as they are thus a check to each other, this produces ſuch a balance of authority, as ſecures the public weal, and the liberty of individuals.

XXVII. But with reſpect to ſimple governments; in theſe the ſovereignty may be either abſolute or limited. Thoſe who are poſſeſſed of the ſovereignty, exerciſe it ſometimes in an abſolute, and ſometimes in a limited manner, by fundamental laws, which preſcribe bounds to the ſovereign, with regard to the manner in which he ought to govern.

XXVIII. On this occaſion it is expedient to obſerve, that all the accidental circumſtances, which can modify ſimple Monarchies or Ariſtocracies, and which, in ſome meaſure, may be ſaid to limit ſovereignty, do not, for that reaſon, change the form of government, which ſtill continues the ſame. One government may partake ſomewhat of another, when the manner, in which the ſovereign governs, ſeems to be borrowed from the form of the latter; but it does not, for that reaſon, change its nature.

XXIX. For example, in a Democratic ſtate, the people may entruſt the care of ſeveral affairs either to a principal member, or to a ſenate. In an Ariſtocracy, there may be a chief magiſtrate inveſted with a particular authority, or an aſſembly of the people to be conſulted on ſome occaſions. Or laſtly, in a Mo-

narchic

marchic ſtate, important affairs may be laid before a ſenate, &c. But theſe accidental circumſtances do by no means change the form of the government; neither is there a partition of the ſovereignty on this account; the ſtate ſtill continues purely either Democratic, Ariſtocratic, or Monarchic.

XXX. In a word, there is a wide difference between exerciſing a proper power, and acting by a foreign and precarious authority, which may every minute be taken away by him who conferred it. Thus what conſtitutes the characteriſtic of mixed or compound commonwealths, and diſtinguiſhes them from ſimple governments, is, that the different orders of the ſtate, who have a ſhare in the ſovereignty, poſſeſs the rights which they exerciſe by an equal title, that is to ſay, in virtue of the fundamental law, and not under the title of commiſſion, as if the one was only the miniſter or executor of the other's will. We muſt therefore be ſure to diſtinguiſh between the form of government, and the manner of governing.

XXXI. Theſe are the principal obſervations with reſpect to the various forms of government. Puffendorf explains himſelf in a ſomewhat different manner, and calls thoſe governments irregular, which we have ſtiled mixed; and he gives the name of regular to the ſimple governments*.

XXXII. But this regularity is only in idea; the true rule of practice ought to be that which is moſt conformable to the end of civil ſociety, ſuppoſing

* See Law of nature and nations, book vii. chap. v.

men to be in their uſual ſtate, and taking the general courſe of things into the account, according to the experience of all countries and ages. Now on this footing, the ſtates, in which the whole depends on a ſingle will, are ſo far from being happy, that it is certain their ſubjects have the moſt frequent reaſon to lament the loſs of their natural independency.

XXXIII. Beſides, it is with the body politic, as with the human body; there is a difference between a ſound and a cachectic ſtate.

XXXIV. Theſe diſorders ariſe either from the abuſe of the ſovereign power, or from the bad conſtitution of the ſtate; and the cauſes thereof are to be ſought for either in the defects of the governors, or in thoſe of the government itſelf.

XXXV. In Monarchies, the defects of the perſon are, when the king has not the qualifications neceſſary for reigning, when he has little or no attachment to the public good, and when he delivers his ſubjects up as a prey, either to the avarice or ambition of his miniſters, &c.

XXXVI. With regard to Ariſtocracies, the defects of the perſons are, when, by intrigue and other ſiniſter methods, they introduce into the council, either wicked men, or ſuch as are incapable of buſineſs, while perſons of merit are excluded; when factions and cabals are formed; and when the nobles treat the populace as ſlaves, &c.

XXXVII. In

XXXVII. In fine, we ſometimes ſee alſo in Democracies, that their aſſemblies are diſturbed with inteſtine broils, and merit is oppreſſed by envy, &c.

XXXVIII. In regard to the defects of government, they are of various kinds. For example, if the laws of the ſtate be not conformable to the natural genius of the people, tending to engage in a war a nation, that is not naturally warlike, but inclined to the peaceful arts; or if not, they ſhould be agreeable to the ſituation and the natural products of the country; thus it is bad conduct, not to promote commerce and manufactures, in a province well ſituated for that purpoſe, and abounding with the materials of trade. It is alſo a defect of government, if the conſtitution of the ſtate renders the diſpatch of affairs very ſlow or difficult, as in Poland, where the oppoſition of a ſingle member diſſolves the diet.

XXXIX. It is cuſtomary to give particular names to theſe defects in government. Thus the corruption of Monarchy is called Tyranny. Oligarchy is the abuſe of Ariſtocracy; and the abuſe of Democracy is called Ochlocracy. But it often happens that theſe words denote leſs a defect or diſorder in the ſtate, than ſome particular paſſion or diſguſt in thoſe who uſe them.

XL. To conclude this chapter, we have only to take ſome notice of thoſe compound forms of government which are formed by the union of ſeveral particular ſtates. Theſe may be defined an aſſem-

blage

blage of perfect governments ſtrictly united by ſome particular bond, ſo that they ſeem to make but a ſingle body with reſpect to the affairs which intereſt them in common, though each preſerves its ſovereignty full and entire, independently of the others.

XLI. This aſſemblage is formed either by the union of two or more diſtinct ſtates, under one and the ſame king; as for inſtance, England, Scotland, and Ireland, before the union lately made between England and Scotland; or when ſeveral independent ſtates agree among themſelves to form but a ſingle body: ſuch are the united provinces of the Netherlands, and the Swiſs cantons.

XLII. The firſt kind of union may happen, either by marriage, or by ſucceſſion, or when a people chuſe for their king the ſovereign of another country; ſo that thoſe different ſtates come to be united under a prince who governs each in particular by its fundamental laws.

XLIII. As to the compound governments, formed by the perpetual confederacy of ſeveral ſtates, it is to be obſerved, that this is the only method by which ſeveral ſmall governments, too weak to maintain themſelves ſeparately againſt their enemies, are enabled to preſerve their liberties.

XLIV. Theſe confederate ſtates engage to each other only to exerciſe, with common conſent, certain parts of the ſovereignty, eſpecially thoſe which relate to their mutual defence againſt foreign enemies.

But each of the confederates retains an entire liberty of exercifing, as it thinks proper, thofe parts of the fovereignty, which are not mentioned in the treaty of union, as parts that ought to be exercifed in common.

XLV. Laftly, it is abfolutely neceffary, in confederate ftates, to afcertain a time and place for affembling when occafion requires, and to inveft fome member with a power of convening the affembly for extraordinary affairs, and fuch as will not admit of delay. Or they may eftablifh a perpetual affembly, compofed of the deputies of each ftate, for difpatching common affairs according to the orders of their fuperiors.

CHAP. II.

An effay on this queftion, Which is the beft form of government?

I. IT is certainly one of the moft important queftions in politics, and has moft exercifed the men of genius to determine *the beft form of government.*

II. Every form of government has its advantages and inconveniencies infeparable from it. It would be in vain to feek for a government abfolutely perfect; and however perfect it might appear in fpeculation, yet it is certain, that in practice, and under the administration

miniſtration of men, it will ever be attended with ſome particular defects.

III. But though we cannot arrive at the ſummit of perfection in this reſpect, it is nevertheleſs certain, that there are different degrees, which prudence muſt determine. That government ought to be accounted the moſt complete, which beſt anſwers the end of its inſtitution, and is attended with feweſt inconveniencies. Be this as it may, the examination of this queſtion furniſhes very uſeful inſtructions both to ſubjects and ſovereigns.

IV. Diſputes on this ſubject are of a very ancient date; and there is nothing more intereſting upon the topic, than what we read in the father of hiſtory, Herodotus, who relates what paſſed in the council of the ſeven chiefs of Perſia, when the government was to be re-eſtabliſhed after the death of Cambyſes, and the puniſhment of the Magus, who had uſurped the throne under the pretext of being Smerdis the ſon of Cyrus.

V. Otanes was of opinion, that Perſia ſhould be formed into a republic, and ſpoke nearly in the following ſtrain. "I am not of opinion that we "ſhould lodge the government in the hands of a "ſingle perſon. You know to what exceſs Cam-"byſes proceeded, and to what degree of inſolence "the Magus arrived: how can the ſtate be well "governed in a monarchy, where a ſingle perſon "is permitted to act according to his pleaſure?

" An authority uncontrolled corrupts the moſt vir-
" tuous man, and defeats his beſt qualities. Envy
" and inſolence flow from riches and proſperity;
" and all other vices are derived from thoſe two
" ſources. Kings hate virtuous men who oppoſe
" their unjuſt deſigns, but careſs the wicked who
" favour them. A ſingle perſon cannot ſee every
" thing with his own eyes; he often lends a favour-
" able ear to falſe accuſations; he ſubverts the laws
" and cuſtoms of the country; he attacks the chaſtity
" of women, and wantonly puts the innocent to
" death. When the people have the government in
" their own hands, the equality among the members
" prevents all thoſe evils. The magiſtrates are, in
" this caſe, choſen by lot; they render an account
" of their adminiſtration, and they form all their
" reſolutions in common with the people. I am
" therefore of opinion, that we ought to reject
" Monarchy and introduce a popular government,
" becauſe we rather find theſe advantages in a mul-
" titude than in a ſingle perſon." Such was the
harangue of Otanes.

VI. But Megabyſes ſpoke in favour of Ariſtocracy.
" I approve (ſaid he) of the opinion of Otanes with
" reſpect to exterminating Monarchy, but I believe
" he is wrong in endeavouring to perſuade us to
" truſt the government to the diſcretion of the
" people; for ſurely nothing can be imagined more
" ſtupid and inſolent than the giddy multitude.
" Why ſhould we reject the power of a ſingle man,
" to deliver up ourſelves to the tyranny of a blind
" and diſorderly populace? If a king ſets about

"an enterprize, he is at leaſt capable of liſtening "to advice; but the people are a blind monſter, "devoid of reaſon and capacity. They are ſtrangers "to decency, virtue, and their own intereſts. They "do every thing precipitately, without judgment, "and without order, reſembling a rapid torrent, "which cannot be ſtemmed. If therefore you "deſire the ruin of the Perſians, eſtabliſh a popular "government. As to myſelf, I am of opinion, "that we ſhould make choice of virtuous men, "and lodge the government in their hands." Such was the ſentiment of Megabyſes.

VII. After him, Darius ſpoke in the following terms. "I am of opinion, that there is a great "deal of good ſenſe in the ſpeech which Megabyſes "has made againſt a popular ſtate; but I alſo think, "that he is not entirely in the right, when he prefers "the government of a ſmall number to Monarchy. "It is certain, that nothing can be imagined better, "or more perfect, than the adminiſtration of a "virtuous man. Beſides, when a ſingle man is "maſter, it is more difficult for the enemy to diſ-"cover his ſecret counſels and reſolutions. When "the government is in the hands of many, it is im-"poſſible but enmity and hatred muſt ariſe among "them; for as every one deſires his opinion to be "followed, they gradually become mutual enemies. "Emulation and jealouſy divide them, and then "their averſions run to exceſs. From hence ariſe "ſeditions; from ſeditions, murders; and from "murders, a monarch inſenſibly becomes neceſſary. "Thus the government at length is ſure to fall

" into the hands of a ſingle perſon. In a popular " ſtate, there muſt needs be a great ſtore of malice " and corruption. It is true, equality does not " generate hatred; but it foments friendſhip among " the wicked, who ſupport each other, till ſome " perſon or other, who by his behaviour has ac- " quired an authority over the multitude, diſcovers " the frauds, and expoſes the perfidy of thoſe vil- " lains. Such a man ſhews himſelf really a mo- " narch; and hence we know that Monarchy is the " moſt natural government, ſince the ſeditions of " Ariſtocracy, and the corruption of Democracy, " are equal inducements for our uniting the ſupreme " power in the hands of a ſingle perſon."

The opinion of Darius was approved, and the government of Perſia continued monarchic. We thought this paſſage of hiſtory ſufficiently intereſting to be related on this occaſion.

VIII. To determine this queſtion, we muſt trace matters to their very ſource. Liberty, under which we muſt comprehend all the moſt valuable enjoyments, has two enemies in civil ſociety. The firſt is licentiouſneſs, and confuſion; and the ſecond is oppreſſion ariſing from tyranny.

IX. The firſt of thoſe evils ariſes from liberty itſelf, when it is not kept within due bounds.

The ſecond is owing to the remedy which mankind have contrived againſt the former evil, that is, to ſovereignty.

X. The

X. The height of human felicity and prudence is to know how to guard againſt thoſe two enemies: the only method is to have a well-conſtituted government, formed with ſuch precautions, as to baniſh licentiouſneſs, and yet be no way introductive to tyranny.

XI. It is this happy temperament that alone can give us the idea of a good government. It is evident, that the political conſtitution which avoids thoſe extremes, is ſo juſtly adapted for the preſervation of order, and for providing againſt the neceſſities of the people, that it leaves them a ſufficient ſecurity, that this end ſhall be perpetually held in view.

XII. But here we ſhall be aſked, Which government is it that approaches neareſt to this perfection? Before we anſwer this queſtion, it is proper to obſerve, that it is very different from our being aſked, Which is the moſt legitimate government?

XIII. As for the latter queſtion, it is certain, that governments of every kind, which are founded on the free acquieſcence of the people, whether expreſs or juſtified by a long and peaceable poſſeſſion, are all equally legitimate, ſo long at leaſt as, by the intention of the ſovereign, they tend to promote the happineſs of the people: thus no other cauſe can ſubvert a government, but an open and actual violence, either in its eſtabliſhment, or in its exerciſe; I mean uſurpation, or tyranny.

XIV. To return to the principal queſtion, I affirm, that the beſt government is neither abſolute Monarchy, nor that which is entirely popular; the former is too violent, encroaches on liberty, and inclines too much to tyranny; the latter is too weak, leaves the people too much to themſelves, and tends to confuſion and licentiouſneſs.

XV. It were to be wiſhed, for the glory of ſovereigns and for the happineſs of the people, that we could conteſt the fact above aſſerted with reſpect to abſolute governments. We may venture to affirm, that nothing can be compared to an abſolute government, in the hands of a wiſe and virtuous prince. Order, diligence, ſecrecy, expedition, the greateſt enterprizes, and the moſt happy execution, are the certain effects of it. Dignities, honours, rewards and puniſhments, are all diſpenſed under it with juſtice and diſcernment. So glorious a reign is the era of the golden age.

XVI. But to govern in this manner, a ſuperior genius, perfect virtue, great experience, and uninterrupted application, are neceſſary. Man, in ſo high an elevation, is rarely capable of ſo many accompliſhments. The multitude of objects diverts his attention, pride ſeduces him, pleaſure tempts him, and flattery, the bane of the great, does him more injury than all the reſt. It is difficult to eſcape ſo many ſnares; and it generally happens, that an abſolute prince becomes an eaſy prey to his paſſions, and conſequently renders his ſubjects miſerable.

XVII. Hence

XVII. Hence proceeds the difguft of people to abfolute governments, and this difguft fometimes is worked up to averfion and hatred. This has alfo given occafion to politicians to make two important reflections.

The firft is, that, in an abfolute government, it is rare to fee the people intereft themfelves in its prefervation. Oppreffed with their burdens, they long for a revolution, which cannot render their fituation more uncomfortable.

The fecond is, that it is the intereft of princes to engage the people in the fupport of their government, and to give them a fhare therein, by privileges tending to fecure their liberty. This is the beft expedient to promote the fafety of princes at home, together with their power abroad, and their glory in every refpect.

XVIII. It has been faid of the Romans, that, fo long as they fought for their own interefts, they were invincible; but, as foon as they became flaves under abfolute mafters, their courage failed, and they afked for no more than bread and public diverfions, *panem & circenfes*.

XIX. On the contrary, in ftates where the people have fome fhare in the government, every individual interefts himfelf in the public good, becaufe each, according to his quality or merit, partakes of the general fuccefs, or feels the lofs fuftained by the ftate. This is what renders men active and generous, what infpires them with an ardent love of their country, and with an invincible courage, fo as to be proof againft the greateft misfortunes.

XX. When

XX. When Hannibal had gained four victories over the Romans, and killed more than two hundred thousand of that nation, when, much about the fame time, the two brave Scipios perished in Spain, not to mention several considerable losses at sea, and in Sicily, who could have thought that Rome could have withstood her enemies? Yet the virtue of her citizens, the love they bore their country, and the interest they had in the government, augmented the strength of that republic in the midst of her calamities, and at last she surmounted every difficulty. Among the Lacedæmonians and Athenians we find several examples to the same point.

XXI. These advantages are not found in absolute governments. We may justly affirm, that it is an essential defect in them not to interest the people in their preservation, that they are too violent, tending too much to oppression, and very little to the good of the subject.

XXII. Such are absolute governments: those of the popular kind are no better, and we may say they have no advantage but liberty, and their leaving the people at their option to choose a better.

XXIII. Absolute governments have at least two advantages: the first is, that they have happy intervals when in the hands of good princes: the second is, that they have a greater degree of force, activity, and expedition.

XXIV. But a popular government has none of those advantages;

advantages; formed by the multitude, it bears a ſtrong reſemblance to that many-headed monſter. The multitude is a mixture of all kinds of people; it contains a few men of parts, ſome of whom may have honeſt intentions; but far the greater number cannot be depended on, as they have nothing to loſe, and conſequently can hardly be truſted. Beſides, a multitude always acts with ſlowneſs and confuſion. Secrecy and precaution are advantages unknown to them.

XXV. Liberty is not wanting in popular ſtates; nay, they have rather too much of it, ſince it degenerates into licentiouſneſs. Hence it is that they are ever tottering and weak. Inteſtine commotions, or foreign attacks, often throw them into conſternation: it is their ordinary fate to fall a prey to the ambition of their fellow-citizens, or to foreign uſurpation, and thus to paſs from the higheſt liberty to the loweſt ſlavery.

XXVI. This is proved by the experience of different nations. Even at preſent, Poland is a ſtriking example of the defects of popular government, from the anarchy and diſorder which reigns in that republic. It is the ſport of its own inhabitants and of foreign nations, and is frequently the ſeat of inteſtine war; becauſe, under the appearance of Monarchy, it is indeed too popular a government.

XXVII. We need only read the hiſtories of Florence and Genoa, to behold a lively exhibition of the misfortunes which republics ſuffer from the multitude,

titude, when the latter attempt to govern. The ancient republics, eſpecially Athens, the moſt conſiderable in Greece; are capable of ſetting this truth in a ſtronger light.

XXVIII. In a word, Rome periſhed in the hands of the people; and monarchy gave birth to it. The patricians, who compoſed the ſenate, by freeing it from the regal dignity, had rendered it miſtreſs of Italy. The people, by the encroachment of the tribunes, gradually uſurped the authority of the ſenate. From that time diſcipline was relaxed, and gave place to licentiouſneſs. At length the republic was reduced, by the people themſelves, to the moſt abject ſlavery.

XXIX. It is not therefore to be doubted, but popular governments are the weakeſt and worſt of all others. If we conſider the education of the vulgar, their laborious employments, their ignorance and brutality, we muſt quickly perceive, that they are made to be governed; and that good order, and their own advantage, forbid them to interfere with that province.

XXX. If therefore neither the government of the multitude, nor the abſolute will of a ſingle perſon, are fit to procure the happineſs of a nation, it follows, that the beſt governments are thoſe which are ſo tempered, as to ſecure the happineſs of the ſubjects, by avoiding tyranny and licentiouſneſs.

XXXI. There are two ways of finding this temperament.

The firſt conſiſts in lodging the ſovereignty in a council ſo compoſed, both as to the number and choice of perſons, that there ſhall be a moral certainty of their having no other intereſts than thoſe of the community, and of their being always ready to give a faithful account of their conduct. This is what we ſee happily practiſed in moſt republics.

XXXII. The ſecond is, to limit the ſovereignty of the prince in monarchic ſtates, by fundamental laws, or to inveſt the perſon, who enjoys the honours and title of ſovereignty, with only a part of the ſupreme authority, and to lodge the other in different hands, for example, in a council or parliament. This is what gives birth to limited monarchies *.

XXXIII. With regard to Monarchies, it is proper, for example, that the military and legiſlative powers, together with that of raiſing taxes, ſhould be lodged in different hands, to the end that they may not be eaſily abuſed. It is eaſy to conceive, that theſe reſtrictions may be made different ways. The general rule, which prudence directs, is to limit the power of the prince, ſo that no danger may be apprehended from it; but at the ſame time not to carry things to exceſs, for fear of weakening the government.

XXXIV. By following this juſt medium, the people will enjoy the moſt perfect liberty, ſince they have all the moral ſecurities that the prince will not abuſe his power. The prince, on the other hand,

* See part i. chap. vii. § 26, &c.

being,

being, as it were, under a neceſſity of doing his duty, conſiderably ſtrengthens his authority, and enjoys a high degree of happineſs and ſolid glory; for as the felicity of the people is the end of government, it is alſo the ſureſt foundation of the throne. See what has been already ſaid on this ſubject.

XXXV. This ſpecies of Monarchy, limited by a mixed government, unites the principal advantages of abſolute Monarchy, and of the Ariſtocratic and popular governments; at the ſame time it avoids the dangers and inconveniencies peculiar to each. This is the happy temperament which we have been endeavouring to find.

XXXVI. The truth of this remark has been proved by the experience of paſt ages. Such was the government of Sparta: Lycurgus, knowing that each of the three ſorts of ſimple governments had very great inconveniencies; that Monarchy eaſily fell into arbitrary power and tyranny; that Ariſtocracy degenerated into the oppreſſive government of a few individuals; and Democracy into a wild and lawleſs dominion, thought it expedient to combine thoſe three governments in that of Sparta, and mix them, as it were, into one, ſo that they might ſerve as a remedy and counterpoiſe to each other. This wiſe legiſlator was not deceived, and no republic preſerved its laws, cuſtoms, and liberty, longer than that of Sparta.

XXXVII. It may be ſaid, that the government of the Romans, under the republic, united in ſome meaſure,

ſure, as that of Sparta, the three ſpecies of authority. The conſuls held the place of kings, the ſenate formed the public council, and the people had alſo ſome ſhare in the adminiſtration.

XXXVIII. If modern examples are wanted, is not England at preſent a proof of the excellency of mixed governments? Is there a nation, every thing conſidered, that enjoys a higher degree of proſperity or reputation?

XXXIX. The northern nations, which ſubverted the Roman empire, introduced into the conquered provinces that ſpecies of government, which was then called Gothic. They had kings, lords, and commons; and experience ſhews, that the ſtates, which have retained that ſpecies of government, have flouriſhed more than thoſe which have devolved the whole government into the hands of a ſingle perſon.

XL. As to Ariſtocratic governments, we muſt firſt diſtinguiſh Ariſtocracy by birth, from that which is elective. The former has ſeveral advantages, but is alſo attended with very great inconveniencies. It inſpires the nobility with pride, and entertains, between the grandees and the people, diviſion, contempt, and jealouſy, which are productive of conſiderable evils.

XLI. But the latter has all the advantages of the former, without its defects. As there is no privilege of excluſion, and as the door to preferment is open to all the citizens, we find neither pride nor diviſion

viſion among them. On the contrary, a general emulation glows in the breaſts of all the members, converting every thing to the public good, and contributing infinitely to the preſervation of liberty.

XLII. Thus if we ſuppoſe an elective Ariſtocracy, in which the ſovereignty is in the hands of a council ſo numerous, as to comprehend the chief property of the republic, and never to have any intereſt oppoſite to that of the ſtate. If beſides, this council be ſo ſmall, as to maintain order, harmony and ſecrecy; if it be choſen from among the wiſeſt, and moſt virtuous citizens; and laſtly, if its authority be limited and kept within rule, there can be no doubt but ſuch a government is very well adapted to promote the happineſs of a nation.

XLIII. The moſt difficult point in theſe governments, is to temper them in ſuch a manner, that, while the people are aſſured of their liberty, by giving them ſome ſhare in the government, theſe aſſurances ſhall not be carried too far, ſo as to make the government approach too near to Democracy: for the preceding reflections ſufficiently evince the inconveniencies which would reſult from this ſtep.

XLIV. Let us therefore conclude, from this inquiry into the different forms of government, that the beſt are either a limited Monarchy, or an Ariſtocracy tempered with Democracy, by ſome privileges in favour of the body of the people.

XLV. It is true there are always ſome deductions

to

to be made from the advantages which we have aſcribed to thoſe governments; but this is owing to the infirmity of human nature, and not to the eſtabliſhments. The conſtitution above deſcribed is the moſt perfect that can be imagined, and if we adulterate it by our vices and follies, this is the fate of all ſublunary affairs; and ſince a choice muſt be made, the beſt is that attended with the feweſt inconveniencies.

XLVI. In a word, ſhould it ſtill be aſked, which government is beſt? I would anſwer, that every ſpecies of government is not equally proper for every nation, and that, in this point, we muſt have a regard to the humour and character of the people, and to the extent of the country.

XLVII. Great ſtates can hardly admit of republican governments; hence a monarchy, wiſely limited, ſuits them better. But as to ſtates, of an ordinary extent, the moſt advantageous government for them, is an elective ariſtocracy, tempered with ſome privileges in favour of the body of the people.

CHAP. III.

Of the different ways of acquiring ſovereignty.

I. THE only juſt foundation of all acquiſition of ſovereignty, is the conſent, or will of the people*. But as this conſent may be given different

* On this ſubject, ſee part i. chap. vi.

ways, according to the different circumſtances attending it; hence we diſtinguiſh the ſeveral ways of acquiring ſovereignty.

II. Sometimes a people are conſtrained, by force of arms, to ſubmit to the dominion of a conqueror; at other times, the people, of their own accord, confer the ſupreme authority on ſome particular perſon. Sovereignty may therefore be acquired either by force and violence, or in a free and voluntary manner.

III. Theſe different acquiſitions of ſovereignty may agree in ſome meaſure to all ſorts of governments; but as they are moſt remarkable in monarchies, it ſhall be principally with reſpect to the latter, that we ſhall examine this queſtion.

1°. *Of conqueſt.*

IV. Sovereignty is ſometimes acquired by force, or rather is ſeized by conqueſt or uſurpation.

V. Conqueſt is the acquiſition of ſovereignty, by the ſuperiority of a foreign prince's arms, who reduces the vanquiſhed to ſubmit to his government. Uſurpation is properly made by a perſon naturally ſubmitted to him from whom he wreſts the ſupreme power; but cuſtom often confounds theſe two terms.

VI. There are ſeveral remarks to be made on conqueſt, conſidered as a method of acquiring the ſovereignty.

1°. Con-

1°. Conqueſt, in itſelf, is rather the occaſion of acquiring the ſovereignty, than the immediate cauſe of this acquiſition. The immediate cauſe is the conſent of the people, either tacit or expreſſed. Without this conſent the ſtate of war always ſubſiſts between two enemies, and one is not obliged to obey the other. All that can be ſaid is, that the conſent of the vanquiſhed is extorted by the ſuperiority of the conqueror.

VII. 2°. Lawful conqueſt ſuppoſes, that the conqueror has had juſt reaſon to wage war againſt the vanquiſhed. Without this, conqueſt is by no means, of itſelf, a juſt title; for a man cannot acquire a ſovereignty over a nation, by bare ſeizure, as over a thing which belongs to no proprietor. Thus when Alexander waged war againſt diſtant nations, who had never heard of his name, certainly ſuch a conqueſt was no more a lawful title to the ſovereignty over thoſe people, than robbery is a lawful manner of becoming rich. The quality and number of the perſons do not change the nature of the action, the injury is the ſame, and the crime equal.

VIII. But if the war be juſt, the conqueſt is alſo the ſame: for, in the firſt place, it is a natural conſequence of the victory; and the vanquiſhed, who deliver themſelves to the conqueror, only purchaſe their lives by the loſs of their liberties. Beſides, the vanquiſhed having, through their own fault, engaged in an unjuſt war, rather than grant the ſatisfaction they owed, are ſuppoſed to have tacitly conſented to the conditions which the con-

queror ſhould impoſe on them, provided they were neither unjuſt nor inhuman.

IX. 3°. But what muſt we think of unjuſt conqueſts, and of ſubmiſſion extorted by mere violence? Can it give a lawful right? I anſwer, we ſhould diſtinguiſh whether the uſurper has changed the government from a republic into a monarchy, or diſpoſſeſſed the lawful monarch. In the latter caſe, he is obliged to reſtore the crown to the right owner, or to his heirs, till it can be preſumed that they have renounced their pretenſion; and this is always preſumed, when a conſiderable time is elapſed without their being willing or able to make any effort to recover the crown?

X. The law of nations therefore admits of a kind of preſcription with reſpect to ſovereignty. This is requiſite for the intereſt and tranquillity of ſocieties; a long and quiet poſſeſſion of the ſupreme power, muſt eſtabliſh the legality of it, otherwiſe there would never be an end of diſputes in regard to kingdoms and their limits; this would be a ſource of perpetual quarrels, and there would hardly be any ſuch thing as a ſovereign lawfully poſſeſſed of the ſupreme authority.

XI. It is, indeed, the duty of the people, in the beginning, to reſiſt the uſurper with all their might, and to continue faithful to their prince; but if, in ſpite of their utmoſt efforts, their ſovereign is defeated, and is no longer able to aſſert his right, they are

are obliged to no more, but may lawfully take care of their own preſervation.

XII. The people cannot live in a ſtate of anarchy, and as they are not obliged to expoſe themſelves to perpetual wars, in defence of the rights of their former ſovereign, their conſent may render the right of the uſurper lawful; and in this caſe the ſovereign dethroned ought to reſt contented with the loſs of his dominions, and conſider it as a misfortune.

XIII. With regard to the former caſe, when the uſurper has changed the republic into a monarchy; if he governs with moderation and equity, it is ſufficient that he has reigned peaceably for ſome time, to afford reaſon to believe, that the people conſent to his dominion, and to efface what was defective in the manner of his acquiring it. This may be very well applied to the reign of Auguſtus. But if, on the contrary, the prince, who has made himſelf maſter of the republic, exerciſes his power in a tyrannical manner, and oppreſſes his ſubjects, they are not then obliged to obey him. In theſe circumſtances the longeſt poſſeſſion imports no more than a long continuation of injuſtice.

2°. *Of the election of ſovereigns.*

XIV. But the moſt legitimate way of acquiring ſovereignty, is founded on the free conſent of the people. This is effected either by the way of election, or by the right of ſucceſſion; for which reaſon kingdoms are diſtinguiſhed into elective and hereditary.

XV. Election is that act, by which the people design or nominate a certain person, whom they judge capable of succeeding the deceased king, to govern the state; and so soon as this person has accepted the offer of the people, he is invested with the sovereignty.

XVI. We may distinguish two sorts of elections, one entirely free, and the other limited in certain respects; the former when the people can chuse whom they think proper, and the latter when they are obliged, for example, to chuse a person of a certain nation, a particular family, religion, &c. Among the ancient Persians, no man could be king unless he had been instructed by the Magi *.

XVII. The time between the death of the king and the election of his successor, is called an *Interregnum*.

XVIII. During the *Interregnum* the state is, as it were, an imperfect body without a head; yet the civil society is not dissolved. The sovereignty then returns to the people, who, till they chuse a new king to exercise it, have it even in their power to change the form of government.

XIX. But it is a wise precaution, to prevent the troubles of an *Interregnum*, to nominate beforehand those, who, during that time, are to hold the reins of government. Thus in Poland the archbishop of

* See Cic. de Divin. lib. i. cap. iv.

Gnesna,

Gnefna, with the deputies of great and little Poland, are appointed for that purpofe.

XX. The perfons, invefted with this employment, are called *Regents of the kingdom*; and the Romans ftiled them *Interreges*. They are temporary, and, as it were, provifional magiftrates, who, in the name, and by the authority of the people, exercife the acts of fovereignty; fo that they are obliged to give an account of their adminiftration. This may fuffice for the way of election.

3°. *Of fucceffion to the crown.*

XXI. The other manner of acquiring fovereignty, is the right of fucceffion, by which princes, who have once acquired the crown, tranfmit it to their fucceffors.

XXII. It may feem at firft that elective kingdoms have the advantage over thofe which are hereditary, becaufe, in the former, the fubjects may always chufe a prince of merit, and capable of governing. However, experience fhews, that, taking all things into the account, the way of fucceffion is more conducive to the welfare of the ftate.

XXIII. For, 1°. by this method we avoid the vaft inconveniencies, both foreign and domeftic, which arife from frequent elections. 2°. There is lefs contention and uncertainty, with refpect to the title of the fucceffor. 3°. A prince, whofe crown is hereditary, all other circumftances being equal, will

take greater care of his kingdom, and ſpare his ſubjects more, in hopes to leave the crown to his children, than if he only poſſeſſed it for life. 4°. A kingdom, where the ſucceſſion is regulated, has greater ſtability and force. It can form mightier projects, and purſue them more vigorouſly, than if it were elective. 5°. In a word, the perſon of the prince ſtrikes the people with greater reverence, and they have reaſon to hope, that the ſplendor of his deſcent, and the impreſſions of his education, will inſpire him with the neceſſary qualities for holding the reins of government.

XXIV. The order of ſucceſſion is regulated either by the will of the laſt king, or by that of the people.

XXV. In kingdoms, truly patrimonial, every king has a right to regulate the ſucceſſion, and to diſpoſe of the crown as he has a mind; provided the choice he makes of his ſucceſſor, and the manner in which he ſettles the ſtate, be not manifeſtly oppoſite to the public good, which, even in patrimonial kingdoms, is ever the ſupreme law.

XXVI. But if the king, prevented perhaps by death, has not named his ſucceſſor, it ſeems natural to follow the laws or cuſtoms eſtabliſhed in that country, concerning private inheritances, ſo far at leaſt as the ſafety of the ſtate will admit *. But it is certain that, in thoſe caſes, the moſt approved and powerful candidate will always carry it.

* See the Law of nature and nations, book vii. chap. vii. § 11.

XXVII. In

XXVII. In kingdoms, which are not patrimonial, the people regulate the order of fucceffion: and although they may eftablifh the fucceffion as they pleafe, yet prudence requires they fhould follow the method moft advantageous to the ftate, beft adapted to maintain order and peace, and moft expedient to promote the public fecurity.

XXVIII. The ufual methods are, a fucceffion, fimply hereditary, which follows nearly the rules of common inheritances; and the lineal fucceffion, which receives more particular limitations.

XXIX. The good of the ftate therefore requires that a fucceffion, fimply hereditary, fhould vary in feveral things from private inheritances.

1°. The kingdom ought to remain indivifible, and not be fhared among feveral heirs, in the fame degree; for, in the firft place, this would confiderably weaken the ftate, and render it lefs proper to refift the attacks of a foreign enemy. Befides, the fubjects, having different mafters, would no longer be fo clofely united among themfelves: and laftly, this might lay a foundation for inteftine wars, as experience has too often evinced.

XXX. 2°. The crown ought to remain in the pofterity of the firft poffeffor, and not to pafs to his relations in a collateral line, and much lefs to thofe who have only connections of affinity with him. This is, no doubt, the intention of a people who have

have rendered the crown hereditary in any one family. Thus, unleſs it is otherwiſe determined, in default of the deſcendants of the firſt poſſeſſor, the right of diſpoſing of the kingdom returns to the nation.

XXXI. 3°. Thoſe only ought to be admitted to the ſucceſſion, who are born of a marriage conformable to the laws of the nation. For this there are ſeveral reaſons. 1°. This was, no doubt, the intention of the people, when they ſettled the crown on the deſcendants of the king. 2°. The people have not the ſame reſpect for the king's natural or baſe ſons, as for his lawful children. 3°. The father of natural children is not known for certain, there being no ſure method of aſcertaining the father of a child born out of wedlock; and yet it is of the laſt importance that there ſhould be no doubt about the birth of thoſe who are to reign, in order to avoid the diſputes which might embroil the kingdom. Hence it is, that, in ſeveral countries, the queen is delivered in public, or in the preſence of ſeveral perſons.

XXXII. 4°. Adopted children, not being of the royal blood, are alſo excluded from the crown, which ought to revert to the people ſo ſoon as the royal line fails.

XXXIII. 5°. Among thoſe who are in the ſame degree, whether really or by repreſentation, the males are to be preferred to the females, becauſe they are preſumed more proper for the command of armies,

and

and for exercising the other functions of government.

XXXIV. 6°. Among several males, or several females in the same degree, the eldest ought to succeed. It is birth which gives this right; for the crown being at the same time indivisible and hereditary, the eldest, in consequence of his birth, has a preference, of which the younger cannot deprive him. But it is just that the eldest should give his brothers a sufficiency to support themselves decently, and in a manner suitable to their rank. What is allotted them for this purpose is distinguished by the name of *Appennage.*

XXXV. 7°. Lastly, we must observe, that the crown does not pass to the successor in consequence of the pleasure of the deceased king, but by the will of the people, who have settled it on the royal family. Hence it follows, that the inheritance of the particular estate of the king, and that of the crown, are of a quite different nature, and have no connection with each other; so that, strictly speaking, the successor may accept of the crown, and refuse the private inheritance; and, in this case, he is not obliged to pay the debts due upon this particular estate.

XXXVI. But it is certain, that honour and equity hardly permit a prince, who ascends the throne, to use this right, and that, if he has the glory of his royal house at heart, he will, by œconomy and frugality, be enabled to pay the debts of his predecessor. But this ought not to be done at the expence of the

 public.

public. Thefe are the rules of fucceffion fimply hereditary.

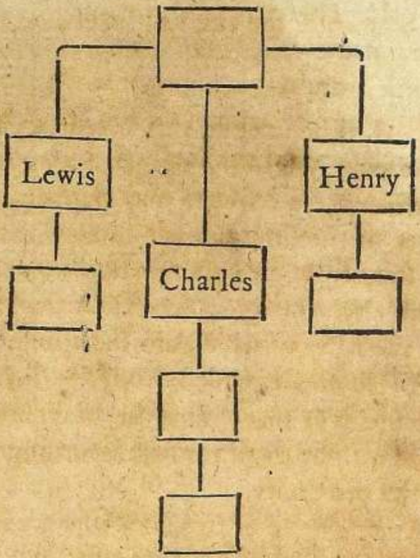
XXXVII. But fince in this hereditary fucceffion, where the next heir to the deceafed king is called to the crown, terrible difputes may happen concerning the degree of proximity, when thofe who remain are a little diftant from the common ftem; feveral nations have eftablifhed the lineal fucceffion from branch to branch, the rules of which are thefe following.

1°. All thofe defcended from the royal founder are accounted fo many lines or branches, each of which has a right to the crown according to the degree of its proximity.

2°. Among thofe of this line, who are in the fame degree, in the firft place fex, and then age, gives the preference.

3°. We muft not pafs from one line to another, fo long as there remains one of the preceding, even though there fhould be another line of relations nearer to the deceafed king. For example;

A king



A king leaves three ſons, Lewis, Charles, and Henry. The ſon of Lewis, who ſucceeds him, dies without children; Charles leaves a grandſon; Henry is ſtill living, and is the uncle of the deceaſed king; the grand-child of Charles is only his couſin-german: and yet this grand-child will have the crown, as being tranſmitted to him by his grand-father, whoſe line has excluded Henry and his deſcendants, till it be quite extinct.

4°. Every one has therefore a right to ſucceed in his rank, and tranſmits this right to his deſcendants, with the ſame order of ſucceſſion, though he has never reigned himſelf; that is to ſay, the right of the deceaſed paſſes to the living, and that of the living to the deceaſed.

5°. If the laſt king has died without iſſue, we make choice of the neareſt line to his, and ſo on.

XXXVIII.

XXXVIII. There are two principal kinds of lineal fucceffion, namely, *Cognatic* and *Agnatic*. Thefe names come from the Latin words *Cognati* and *Agnati*, the former of which, in the Roman law, fignifies the relations on the mother's fide, and the latter thofe on the father's fide.

XXXIX. The *Cognatic* lineal fucceffion is that which does not exclude women from the fucceffion, but only calls them after the males in the fame line; fo that, when only women remain, there is no tranfition made to another line, but the fucceffion runs back to the female again, in cafe the males, who were fuperior or equal to them in other refpects, fhall happen to fail with all their defcendants. This fucceffion is alfo called *Caftilian*. Hence it follows, that the daughter of the fon of the laft king, is preferred to the fon of the daughter of the fame prince, and the daughter of one of his brothers to the fon of one of his fifters.

XL. The *Agnatic* lineal fucceffion is that in which only the male iffue of males fucceeds, fo that women, and all thofe defcending from them, are perpetually excluded. It is alfo called the *French* fucceffion. This exclufion of women and their defcendants is principally eftablifhed to hinder the crown from devolving to a foreign race, by the marriage of princeffes of the blood royal.

XLI. Thefe are the principal kinds of fucceffion in ufe, and may be tempered in different manners by the people; but prudence directs us to prefer thofe which are fubject to the leaft difficulty; and in this refpect

the lineal fucceffion has the advantage over that which is fimply hereditary.

XLII. Several queftions, equally curious and important, may be ftarted with regard to the fucceffion of kingdoms. On this fubject the reader may confult Grotius *. We fhall only examine, who has a right to decide the difputes that may arife between two or more pretenders to a crown?

1°. If the kingdom be patrimonial, and difputes arife after the death of the king, the beft method is to refer the caufe to arbitrators of the royal family. The welfare and peace of the kingdom recommend this conduct.

2°. But if in kingdoms eftablifhed by the voluntary act of the people, the difpute arifes even in the king's life-time, he is not a competent judge of it; for then the people muft have invefted him with the power of regulating the fucceffion according to his own pleafure, which is not to be fuppofed. It therefore belongs to the people to decide the difpute, either by themfelves or by their reprefentatives.

3°. The fame holds true, if the difpute does not arife till after the death of the king: in this cafe it is either neceffary to determine which of the pretenders is neareft to the deceafed fovereign; and this is a matter of fact which the people only ought to determine, becaufe they are principally interefted in it.

4°. Or the point is to know, what degree, or line, ought to have the preference according to the order of fucceffion eftablifhed by the people; and then it is a matter of right. Now who can deter-

* The Right of war and peace, book ii. chap. vii. § 25, &c.

mine

mine better this point than the people themſelves, who have eſtabliſhed the order of ſucceſſion? otherwiſe there would be no method of deciding the diſpute but by force of arms, which would be entirely oppoſite to the good of the ſociety.

XLIII. But to avoid every perplexity of this kind, it would be proper that the people ſhould, by a fundamental law, expreſsly reſerve to themſelves the right of judging in the above caſes. What has been ſaid is ſufficient on the different ways of acquiring ſovereignty.

CHAP. IV.

Of the different ways of loſing ſovereignty.

I. LET us now enquire how ſovereignty may be loſt; and in this there is no great difficulty, after the principles we have eſtabliſhed on the ways of acquiring it.

II. Sovereignty may be loſt by abdication, that is, when the reigning prince renounces the ſovereignty, ſo far as it regards himſelf. Of this the hiſtory even of latter ages furniſhes us with remarkable examples.

III. As ſovereignty derives its original from a covenant between the king and his ſubjects; if, for plauſible reaſons, the king thinks proper to renounce the ſupreme dignity, the people have not properly a right to conſtrain him to keep it.

IV. But ſuch an abdication muſt not be made at an unſeaſonable juncture: as for inſtance, when the kingdom is like to ſink into a minority, eſpecially if it be threatened with a war; or when the prince, by his bad conduct, has thrown the ſtate into a dangerous convulſion, in which he cannot abandon it without betraying his truſt, and ruining his country.

V. But we may ſafely ſay, that a prince very rarely finds himſelf in ſuch circumſtances, as ſhould engage him to renounce the crown. However his affairs may be ſituated, he may eaſe himſelf of the drudgery of government, and ſtill retain the ſuperior command. A king ought to die upon the throne; and it is a weakneſs unworthy of him, to diveſt himſelf of his authority. Beſides, experience has ſhewn, that abdication is too frequently attended with unhappy cataſtrophes.

VI. It is therefore certain, that a prince may, for himſelf, renounce the crown, or the right of ſucceſſion. But there is great difficulty whether he can do it for his children.

VII. To judge rightly of this point, which has embarraſſed ſo many politicians, we muſt eſtabliſh the following principles.

1°. Every acquiſition of right or power over another, and conſequently of ſovereignty, ſuppoſes the conſent of him over whom this right is to be acquired, and the acceptance of him who is to acquire it. Till this acceptance is ſettled, the intention of the former does not produce, in favour of the latter,

an abſolute and irrevocable right: It is only a ſimple deſignation, which he is at liberty to accept of or not.

VIII. 2°. Let us apply theſe principles. The princes of the blood royal, who have accepted the will of the people, by which the crown has been conferred on them, have certainly thereby acquired an abſolute and irrevocable right, of which they cannot be ſtripped without their own conſent.

IX. 3°. With regard to thoſe who are not yet born, as they have not accepted of the deſignation of the people, they have not as yet acquired any right. Hence it follows, that, in relation to them, this deſignation is only an imperfect act, a kind of expectancy, the completion of which intirely depends on the will of the people.

X. 4°. But it may be ſaid, the anceſtors of thoſe, who are not yet born, have conſented and ſtipulated for them, and conſequently received the engagement of the people in their behalf. But this is rather an argument in favour of renunciation, which it effectually eſtabliſhes; for as the right of thoſe, who are not yet born, has no other foundation than the concurrence of the will of the people and of their anceſtors, it is evident that this right may be taken from them, without injuſtice, by thoſe very perſons, from the ſingle will of whom they hold it.

XI. 5°. The ſingle will of a prince, without the conſent of the nation, cannot effectually exclude his children from the crown to which the people have called them. In like manner, the ſingle will of the people,

people, without the consent of the prince, cannot deprive his children of an expectancy which their father has stipulated with the people in their favour. But if these two wills unite, they may, without doubt, alter what they have established.

XII. 6°. It is true, this renunciation ought not to be made without a cause, and through inconstancy and levity. Under these circumstances it cannot be justified, and the good of the state does not permit, that, without necessity, an alteration should be made in the order of the succession.

XIII. 7°. If, on the other hand, the nation be so situated, that the renunciation of a prince, or a princess, is absolutely necessary to its tranquillity and happiness, then the supreme law of the public good, which has established the order of the succession, requires it should be set aside.

XIV. 8°. Let us add, that it is for the general good of nations, such renunciations be valid, and the parties interested should not attempt to disannul them. For there are times and conjunctures in which they are necessary for the welfare of the state; and if those with whom we are treating, should come to think that the renunciation would afterwards be set aside, they certainly would have nothing to do with us. Now this must be productive of bloody and cruel wars. Grotius decides this question nearly in the same manner. The reader may see what he says of it *.

* Book ii. chap. vii. § 26. and book ii. chap. iv. § 10.

 XV. 9°. Since

XV. 9°. Since war or conqueſt is a method of acquiring ſovereignty, as we have ſeen in the preceding chapter, it is evidently alſo a means of loſing it.

XVI. With regard to tyranny and the depoſing of ſovereigns, both which are alſo ways of loſing the ſupreme power, as theſe two articles bear ſome relation to the duties of ſubjects towards their ſovereigns, we ſhall treat of them in the next chapter more particularly, after we have conſidered thoſe duties.

CHAP. V.

Of the duties of ſubjects in general.

I. ACCORDING to the plan we have laid down, we muſt here treat of the duties of ſubjects. Puffendorf has given us a clear and diſtinct idea of them, in the laſt chapter of his *Duties of a Man and a Citizen.* We ſhall follow him ſtep by ſtep.

II. The duties of ſubjects are either general or particular; and both flow from their ſtate and condition.

III. All ſubjects have this in common, that they live under the ſame ſovereign and the ſame government, and that they are members of the ſame ſtate. From theſe relations the general duties ariſe.

IV. But

IV. But as they have different employments, enjoy different poſts in the ſtate, and follow different profeſſions; hence alſo ariſe their particular duties.

V. It is alſo to be obſerved, that the duties of ſubjects ſuppoſe and include thoſe of man, conſidered ſimply as ſuch, and as a member of human ſociety in general.

VI. The general duties of ſubjects have, for their object, either the governors of the ſtate, or the whole body of the people, viz. their country, or the individuals among their fellow-ſubjects.

VII. As to ſovereigns and governors of the ſtate, every ſubject owes them that reſpect, fidelity, and obedience, which their character demands. Hence it follows, that we ought to be contented with the preſent government, and to form no cabals nor ſeditions, but to be attached to the intereſt of the reigning prince, more than to that of any other perſon, to pay him honour, to think favourably of him, and to ſpeak with reſpect of him and his actions. We ought even to have a veneration for the memory of good princes, &c.

VIII. With reſpect to the whole body of the ſtate, a good ſubject makes it his rule to prefer the public welfare to every thing elſe, bravely to ſacrifice his fortune, and his private intereſts, and even his life, for the preſervation of the ſtate; and to employ all his abilities and his induſtry to advance the honour, and to procure the advantage of his native country.

IX. Laftly, the duty of a fubject to his fellow-fubjects confifts in living with them, as much as he poffibly can, in peace and ftrict union, in being mild, complaifant, affable, and obliging to each of them, in creating no trouble by a rude or litigious behaviour, and bearing no envy or prejudice againft the happinefs of others, &c.

X. As to the particular duties of fubjects, they are connected with the particular employments which they follow in fociety. We fhall here lay down fome general rules in regard to this matter.

1°. A fubject ought not to afpire after any public employment, nor even to accept of it, when he is fenfible that he is not duly qualified for it. 2°. He ought not to accept of more employments than he can difcharge. 3°. He fhould not ufe unlawful means to obtain public offices. 4°. It is even fometimes a kind of juftice not to feek after certain employments, which are not neceffary to us, and which may be as well filled by others, for whom they are perhaps more adapted. 5°. He ought to difcharge the feveral functions of the employments he has obtained, with the utmoft application, exactnefs, and fidelity.

XI. Nothing is more eafy than to apply thefe general maxims to the particular employments of fociety, and to draw inferences proper to each of them; as for inftance, with refpect to minifters and counfellors of ftate, minifters of religion, public profeffors, magiftrates and judges, officers in the army and foldiers, receivers of taxes, ambaffadors, &c.

XII. The particular duties of ſubjects ceaſe with the public charges from whence they ariſe. But as to the general duties, they ſubſiſt ſo long as a perſon remains ſubject to the ſtate. Now a man ceaſes to be a ſubject, principally three ways. 1°. When he goes to ſettle elſewhere. 2°. When he is baniſhed from a country for ſome crime, and deprived of the rights of a ſubject. 3°. And laſtly, when he is reduced to a neceſſity of ſubmitting to the dominion of a conqueror.*

XIII. It is a right inherent in all free people, that every man ſhould have the liberty of removing out of the commonwealth, if he thinks proper. In a word, when a perſon becomes member of a ſtate, he does not thereby renounce the care of himſelf and his own private affairs. On the contrary, he ſeeks a powerful protection, under the ſhelter of which he may procure to himſelf both the neceſſaries and conveniencies of life. Thus the ſubjects of a ſtate cannot be denied the liberty of ſettling elſewhere, in order to procure thoſe advantages which they do not enjoy in their native country.

XIV. On this occaſion there are however certain maxims of duty and decency, which cannot be diſpenſed with.

1°. In general, a man ought not to quit his native country without the permiſſion of his ſovereign: But his ſovereign ought not to refuſe it him, without very important reaſons.

2°. It would be contrary to the duty of a good ſubject to abandon his native country at an unſeaſon-

able juncture, and when the ftate has a particular intereft that he fhould ftay at home*.

3°. If the laws of the country have determined any thing in this point, we muft be determined by them; for we have confented to thofe laws in becoming members of the ftate.

XV. The Romans forced no perfon to continue under their government, and Cicero † highly commends this maxim, calling it the fureft foundation of liberty, "which confifts in being able to preferve "or renounce our right as we think proper."

XVI. Some propofe a queftion, whether fubjects can go out of the ftate in great companies? In this point Grotius and Puffendorf are of oppofite fentiments ‡. As for my own part, I am of opinion that it can hardly happen, that fubjects fhould go out of the ftate in large companies, except in one or other of thefe two cafes; either when the government is tyrannical, or when a multitude of people cannot fubfift in the country; as when manufacturers,

* See Grotius of the Right of war and peace, book ii. chap. iv. § 24.

† O excellent and divine laws, enacted by our anceftors in the beginning of the Roman empire——Let no man change his city againft his will, nor let him be compelled to ftay in it. Thefe are the fureft foundations of our liberty, that every one fhould have it in his power either to preferve or relinquifh his right. *Orat. pro L. Corn. Balb. cap.* 13. *adde Leg.* 12. § 9. *Digeft. de cap. diminut. & poftlim. lib.* 49. *tit.* 15.

‡ See Grotius, *ubi fupra*, and Puffendorf of the Law of nature and nations, book viii. chap. xi. § 4.

for example, or other tradeſmen, cannot find the means of making or diſtributing their commodities. Under theſe circumſtances, the ſubjects may retire if they will, and they are authorized ſo to do by virtue of a tacit exception. If the government be tyrannical, it is the duty of the ſovereign to change his conduct; for no ſubject is obliged to live under tyranny. If miſery forces them to remove, this is alſo a reaſonable exception againſt the moſt expreſs engagements, unleſs the ſovereign furniſhes them with the means of ſubſiſtence. But, except in thoſe caſes, were the ſubjects to remove in great companies, without a cauſe, and by a kind of general deſertion, the ſovereign may certainly oppoſe their removal, if he finds that the ſtate ſuffers great prejudice by it.

XVII. A man ceaſes to be a ſubject of the ſtate when he is for ever baniſhed, in puniſhment for ſome crime: for the moment that the ſtate will not acknowledge a man to be one of its members, but drives him from its territories, he is releaſed from his engagements as a ſubject. The civilians call this puniſhment a civil death. But it is evident that the ſtate, or ſovereign, cannot expel a ſubject from their territories whenever they pleaſe, unleſs he has deſerved it by the commiſſion of ſome crime.

XVIII. Laſtly, a man may ceaſe to be a ſubject by the ſuperior force of an enemy, by which he is reduced to a neceſſity of ſubmitting to his dominion: and this neceſſity is founded on the right which every man has to take care of his own preſervation.

CHAP.

CHAP. VI.

Of the inviolable rights of ſovereignty, of the depoſing of ſovereigns, of the abuſe of the ſupreme power, and of tyranny.

I. WHAT we have ſaid in the preceding chapter, concerning the duties of ſubjects to their ſovereigns, admits of no difficulty. We are agreed in general upon the rule, that the perſon of the ſovereign ſhould be ſacred and inviolable. But the queſtion is, whether this prerogative of the ſovereign be ſuch, that it is never lawful for the people to riſe againſt him, to caſt him from the throne, or to change the form of government?

II. In anſwer to this queſtion, I obſerve in the firſt place, that the nature and end of government lay an indiſpenſable obligation on all ſubjects not to reſiſt their ſovereign, but to reſpect and obey him, ſo long as he uſes his power with equity and moderation, and does not exceed the limits of his authority.

III. It is this obligation to obedience in the ſubjects, that conſtitutes the whole force of civil ſociety and government, and conſequently the intire felicity of the ſtate. Whoever therefore riſes againſt the ſovereign, or makes an attack upon his perſon or authority, renders himſelf manifeſtly guilty of the greateſt crime which a man can commit, ſince he endeavours to ſubvert the firſt foundations of the public felicity, in which that of every individual is included.

IV. But

IV. But if this maxim be true with reſpect to individuals, may we alſo apply it to the whole body of the nation, of whom the ſovereign originally holds his authority? If the people think fit to reſume, or to change the form of government, why ſhould they not be at liberty to do it? Cannot they who make a king, alſo depoſe him?

V. Let us endeavour to ſolve this difficulty. I therefore affirm, that the people themſelves, that is, the whole body of the nation, have not a right to depoſe the ſovereign, or to change the form of government, without any other reaſon than their own pleaſure, and purely from inconſtancy or levity.

VI. In general, the ſame reaſons which eſtabliſh the neceſſity of government and ſupreme authority in ſociety, alſo prove that the government ought to be ſtable, and that the people ſhould not have the power of depoſing their ſovereigns, whenever, thro' caprice or levity, they are inclined ſo to act, and when they have no ſound reaſon to change the form of government.

VII. Indeed, it would be ſubverting all government, to make it depend on the caprice or inconſtancy of the people. It would be impoſſible for the ſtate to be ever ſettled amidſt thoſe revolutions, which would expoſe it ſo often to deſtruction; for we muſt either grant that the people cannot diſpoſſeſs their ſovereign, and change the form of government; or we muſt give them, in this reſpect, a liberty without control.

VIII. An

VIII. An opinion which ſaps the foundation of all authority, which deſtroys all power, and conſequently all ſociety, cannot be admitted as a principle of reaſoning, or of conduct in politics.

IX. The law of congruity or fitneſs is in this caſe of the utmoſt force. What ſhould we ſay of a minor, who, without any other reaſon than his caprice, ſhould withdraw from his guardian, or change him at pleaſure? The preſent caſe is in point the ſame. It is with reaſon that politicians compare the people to minors; neither being capable of governing themſelves. They muſt be ſubject to tuition, and this forbids them to withdraw from their authority, or to alter the form of government, without very ſubſtantial reaſons.

X. Not only the law of congruity forbids the people wantonly to riſe againſt their ſovereign or the government; but juſtice alſo makes the ſame prohibition.

XI. Government and ſovereignty are eſtabliſhed by mutual agreement betwixt the governor and the governed; and juſtice requires that people ſhould be faithful to their engagements. It is therefore the duty of the ſubjects to keep their word, and religiouſly to obſerve their contract with their ſovereign, ſo long as the latter performs his engagements.

XII. Otherwiſe the people would do a manifeſt injuſtice to the ſovereign, in depriving him of a right

which he has lawfully acquired, which he has not uſed to their prejudice, and for the loſs of which they cannot indemnify him.

XIII. But what muſt we think of a ſovereign, who, inſtead of making a good uſe of his authority, injures his ſubjects, neglects the intereſt of the ſtate, ſubverts the fundamental laws, drains the people by exceſſive taxes, which he ſquanders away in fooliſh and uſeleſs expences, &c? Ought the perſon of ſuch a king to be ſacred to the ſubjects? Ought they patiently to ſubmit to all his extortions? Or, can they withdraw from his authority?

XIV. To anſwer this queſtion, which is one of the moſt delicate in politics, I obſerve, that diſaffected, mutinous, or ſeditious ſubjects, often make things, highly innocent, paſs for acts of injuſtice in the ſovereign. The people are apt to murmur at the moſt neceſſary taxes; others ſeek to deſtroy the government, becauſe they have not a ſhare in the adminiſtration. In a word, the complaints of ſubjects oftener denote the bad humour and ſeditious ſpirit of thoſe who make them, than real diſorders in the government, or injuſtice in thoſe who govern.

XV. It were indeed to be wiſhed, for the glory of ſovereigns, that the complaints of ſubjects never had juſter foundations. But hiſtory and experience teach us that they are too often well founded. Under theſe circumſtances, what is the duty of ſubjects? Ought

Ought they patiently to ſuffer? Or, may they reſiſt their ſovereign?

XVI. We muſt diſtinguiſh between the extreme abuſe of ſovereignty, which degenerates manifeſtly into tyranny, and tends to the entire ruin of the ſubjects; and a moderate abuſe of it, which may be attributed to human weakneſs, rather than to an intention of ſubverting the liberty and happineſs of the people.

XVII. In the former caſe, I think the people have a right to reſiſt their ſovereign, and even to reſume the ſovereignty which they have given him, and which he has abuſed to exceſs. But if the abuſe be only moderate, it is their duty to ſuffer ſomething, rather than to riſe in arms againſt their ſovereign.

XVIII. This diſtinction is founded on the nature of man, and the nature and end of government. The people muſt patiently bear the ſlight injuſtices of their ſovereign, or the moderate abuſe of his power, becauſe this is no more than a tribute due to humanity. It is on this condition they have inveſted him with the ſupreme authority. Kings are men as well as others, that is to ſay, liable to be miſtaken, and, in ſome inſtances, to fail in point of duty. Of this the people cannot be ignorant, and on this footing they have treated with their ſovereign.

XIX. If, for the ſmalleſt faults, the people had a right

a right to refift or depofe their fovereign, no prince could maintain his authority, and the community would be continually diftracted; fuch a fituation would be directly contrary both to the end and infti-tution of government, and of fovereignty.

XX. It is therefore right to overlook the leffer faults of fovereigns, and to have a regard to the laborious and exalted office with which they are in-vefted for our prefervation. Tacitus beautifully fays: "We muft endure the luxury and avarice of fove-"reigns, as we endure the barrennefs of a foil, "ftorms, and other inconveniencies of nature. There "will be vices as long as there are men; but thefe "are not continual, and are recompenfed by the "intermixture of better qualities *."

XXI. But if the fovereign fhould pufh things to the laft extremity, fo that his tyranny becomes in-fupportable, and it appears evident that he has form-ed a defign to deftroy the liberty of his fubjects, then they have a right to rife againft him, and even to deprive him of the fupreme power.

XXII. This I prove, 1°. by the nature of tyranny, which of itfelf degrades the fovereign of his dignity. Sovereignty always fuppofes a beneficent power: we muft indeed make fome allowance for the weaknefs

* Quomodo fterilitatem, aut nimios imbres, et cætera naturæ mala, ita luxum vel avaritiam dominantium tolerate. Vitia erunt, donec homines; fed neque hæc continua, et meliorum inter-vente penfantur. *Hift.* lib. iv. cap. lxxiv. N. 4.

inseparable

inſeparable from humanity; but beyond that, and when the people are reduced to the laſt extremity, there is no difference between tyranny and robbery. The one gives no more right than the other, and we may lawfully oppoſe force to violence.

XXIII. 2°. Men have eſtabliſhed civil ſociety and government for their own good, to extricate themſelves from troubles, and to be reſcued from the evils of a ſtate of nature. But it is highly evident, that if the people were obliged to ſuffer every oppreſſion from their ſovereigns, and never to reſiſt their encroachments, this would be reducing them to a far more deplorable ſtate, than that from which they wanted to avoid, by the inſtitution of ſovereignty. It can never ſurely be preſumed, that this was the intention of mankind.

XXIV. 3°. Even a people, who have ſubmitted to an abſolute government, have not thereby forfeited the right of aſſerting their liberty, and taking care of their preſervation, when they find themſelves reduced to the utmoſt miſery. Abſolute ſovereignty, in itſelf, is no more than the higheſt power of doing good; now the higheſt power of procuring the good of a perſon, and the abſolute power of deſtroying him at pleaſure, have no connection with each other. Let us therefore conclude, that never any nation had an intention to ſubmit their liberties to a ſovereign in ſuch a manner, as never to have it in their power to reſiſt him, not even for their own preſervation.

XXV. "Suppofe, fays Grotius *, one had afked "thofe who firft formed the civil laws, whether "they intended to impofe on all the fubjects the "fatal neceffity of dying, rather than taking up arms "to defend themfelves againft the unjuft violence "of their fovereign? I know not whether they would "have anfwered in the affirmative. It is rather rea- "fonable to believe they would have declared, that "the people ought not to endure all manner of in- "juries, except perhaps when matters are fo fitu- "ated, that refiftance would infallibly produce very "great troubles in the ftate, or tend to the ruin of "many innocent people."

XXVI. We have already proved †, that no perfon can renounce his liberty to fuch a degree as that here mentioned. This would be felling his own life, that of his children, his religion, in a word, every advantage he enjoys, which it is not certainly in any man's power to do. This may be illuftrated by the comparifon of a patient and his phyfician.

XXVII. If therefore the fubjects have a right to refift the manifeft tyranny even of an abfolute prince, they muft, for a ftronger reafon, have the fame power with refpect to a prince who has only a limited fovereignty, fhould he attempt to invade the rights and properties of his people ‡.

* Book i. chap. iv. § 7. N. 2.

† Part i. chap. vii. N. 22, &c.

‡ Grotius on the right of war and peace, book i. chap. iv. § 8.

XXVIII. We muſt indeed patiently ſuffer the caprice and auſterity of our maſters, as well as the bad humour of our fathers and mothers; but, as Seneca ſays, "Though a perſon ought to obey a father in "all things, yet he is not obliged to obey him when "his commands are of ſuch a nature, that he ceaſes "thereby to be a father."

XXIX. But it is here to be obſerved, that when we ſay the people have a right to reſiſt a tyrant, or even to depoſe him, we ought not, by the word people, to underſtand the vile populace or dregs of a country, nor the cabal of a ſmall number of ſeditious perſons, but the greateſt and moſt judicious part of the ſubjects of all orders in the kingdom. The tyranny, as we have alſo obſerved, muſt be notorious, and accompanied with the higheſt evidence.

XXX. We may likewiſe affirm, that, ſtrictly ſpeaking, the ſubjects are not obliged to wait till the prince has entirely rivetted their chains, and till he has put it out of their power to reſiſt him. It is high time to think of their ſafety, and to take proper meaſures againſt their ſovereign, when they find that all his actions manifeſtly tend to oppreſs them, and that he is marching boldly on to the ruin of the ſtate.

XXXI. Theſe are truths of the laſt importance. It is highly proper they ſhould be known, not only for the ſafety and happineſs of nations, but alſo for the advantage of good and wiſe kings.

XXXII. They, who are well acquainted with the frailty of human nature, are always diffident of themſelves; and wiſhing only to diſcharge their duty, are contented to have bounds ſet to their authority, and by ſuch means to be hindered from doing what they ought to avoid. Taught by reaſon and experience, that the people love peace and good government, they will never be afraid of a general inſurrection, ſo long as they take care to govern with moderation, and hinder their officers from committing injuſtice.

XXXIII. However, the abettors of deſpotic power and paſſive obedience, ſtart ſeveral difficulties on this ſubject.

Firſt Objection. A revolt againſt the ſupreme power includes a contradiction; for if this power is ſupreme, there is none ſuperior to it. By whom then ſhall it be judged? If the ſovereignty ſtill inheres in the people, they have not transferred their right; and if they have transferred it, they are no longer maſters of it.

Anſwer. This difficulty ſuppoſes the point in queſtion, namely, that the people have diveſted themſelves ſo far of their liberty, that they have given full power to the ſovereign to treat them as he pleaſes, without having in any caſe reſerved to themſelves the power of reſiſting him. This is what no people ever did, nor ever could do. There is therefore no contradiction in the preſent caſe. A power given for a certain end, is limited by that very end. The ſupreme power acknowledges none above itſelf, ſo long as the ſovereign has not forfeited

his dignity. But if he has degenerated into a tyrant, he can no longer claim a right which he has forfeited by his own mifconduct.

XXXIV. *Second Objection.* But who fhall judge, whether the prince performs his duty, or whether he governs tyrannically? Can the people be judges in their own caufe?

Anfwer. It certainly belongs to thofe who have given any perfon a power, which he had not of himfelf, to judge whether he ufes it agreeably to the end for which it was conferred on him.

XXXV. *Third Objection.* We cannot, without imprudence, grant this right of judging to the people. Political affairs are not adapted to the capacity of the vulgar, but are fometimes of fo delicate a nature, that even perfons of the beft fenfe cannot form a right judgment of them.

Anfwer. In dubious cafes, the prefumption ought ever to be in favour of the fovereign, and obedience is the duty of fubjects. They ought even to bear a moderate abufe of fovereignty. But in cafes of manifeft tyranny, every one is in a condition to judge whether he is highly injured or not.

XXXVI. *Fourth Objection.* But do we not expofe the ftate to perpetual revolutions, to anarchy, and to certain ruin, by making the fupreme authority depend on the opinion of the people, and by granting them the liberty to rife on particular occafions againft their fovereign?

Anſwer. This objection would be of ſome force, if we pretended that the people had a right to oppoſe their ſovereign, or to change the form of government, through levity or caprice, or even for a moderate abuſe of the ſupreme power. But no inconveniency will enſue, while the ſubjects only uſe this right with all the precautions, and in the circumſtances above ſuppoſed. Beſides, experience teaches us that it is very difficult to prevail on a nation to change a government to which they have been accuſtomed. We are apt to overlook not only ſlight, but even very conſiderable miſtakes in our governors.

XXXVII. Our hypotheſis does not tend more than any other, to excite diſturbances in a ſtate; for a people, oppreſſed by a tyrannic government, will rebel as frequently as thoſe who live under eſtabliſhed laws. Let the abettors of deſpotic power cry up their prince as much as they pleaſe, let them ſay the moſt magnificent things of his ſacred perſon, yet the people, reduced to the laſt miſery, will trample theſe ſpecious reaſons under foot, as ſoon as they can do it with any appearance of ſucceſs.

XXXVIII. In fine, though the ſubjects might abuſe the liberty which we grant them, yet leſs inconveniency would ariſe from this, than from allowing all to the ſovereign, ſo as to let a whole nation periſh, rather than grant it the power of checking the iniquity of its governors.

CHAP. VIII.

Of the duty of ſovereigns.

I. THERE is a ſort of commerce, or reciprocal return of the duties of the ſubjects to the ſovereign, and of his to them. Having treated of the former, it remains that we take a view of the latter.

II. From what has been hitherto explained concerning the nature of ſovereignty, its end, extent and boundaries, the duty of ſovereigns may eaſily be gathered. But ſince this is an affair of the laſt importance, it is neceſſary to ſay ſomething more particular on it, and to collect the principal heads of it as it were into one view.

III. The higher a ſovereign is raiſed above the level of other men, the more important are his duties: if he can do a great deal of good, he can alſo do a great deal of miſchief. It is on the good or evil conduct of princes that the happineſs or miſery of a whole nation or people depends. How happy is the ſituation, which, on all inſtances, furniſhes occaſions of doing good to ſo many thouſands! But at the ſame time, how dangerous is the poſt which expoſes every moment to the injuring of millions! Beſides, the good which princes do, ſometimes extends to the moſt remote ages; as the evils they commit are multiplied to lateſt poſterity. This ſufficiently diſcovers the importance of their duties.

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IV. In order to have a proper knowledge of the duty of ſovereigns, we need only attentively conſider the nature and end of civil ſocieties, and the exerciſe of the different parts of ſovereignty.

V. 1°. The firſt general duty of princes, is carefully to inform themſelves of every thing that falls under the complete diſcharge of their truſt: for a perſon cannot well acquit himſelf in that which he has not firſt rightly learnt.

VI. It is a great miſtake to imagine that the knowledge of government is an eaſy affair; on the contrary, nothing is more difficult, if princes would diſcharge their duty. Whatever talents or genius they may have received from nature, this is an employment that requires the whole man. The general rules of governing well are few in number; but the difficulty is to make a juſt application of them to times and circumſtances; and this demands the greateſt efforts of diligence and human prudence.

VII. 2°. When a prince is once convinced of the obligation he is under to inform himſelf exactly of all that is neceſſary for the diſcharge of his truſt, and of the difficulty of getting this information, he will begin with removing every obſtacle which may oppoſe it. And firſt it is abſolutely neceſſary, that princes ſhould retrench their pleaſures and uſeleſs diverſions, ſo far as theſe may be a hindrance to the knowledge and practice of their duty. Then they ought to endeavour to have wiſe, prudent and experienced

 perſons

perfons about them; and, on the contrary, to remove flatterers, buffoons, and others, whofe whole merit confifts in things that are frivolous and unworthy the attention of a fovereign. Princes ought not to choofe for favourites thofe who are moft proper to divert them, but fuch as are moft capable of governing the ftate.

VIII. Above all things, they cannot guard too much againft flattery. No human condition has fo great an occafion for true and faithful advice, as that of kings. And yet princes, corrupted by flattery, take every thing, that is free and ingenuous, to be harfh and auftere. They are become fo delicate, that every thing, which is not adulation, offends them: But nothing ought they to be fo grealy afraid of as this very adulation, fince there are no miferies into which they may not be hurried by its poifonous infinuation. On the contrary, the prince is happy, even if he has but a fingle fubject, who is fo generous as to fpeak the truth to him; fuch a man is the treafure of the ftate. Prudent fovereigns, who have their true interefts at heart, ought continually to imagine that court fycophants only regard themfelves and not their mafter; whereas a fincere counfellor, as it were, forgets himfelf, and thinks only on the advantage of his mafter.

IX. 3°. Princes ought to ufe all poffible application to underftand the conftitution of the ftate, and the natural temper of their fubjects. They ought not in this refpect to be contented with a general and fuperficial knowledge. They fhould enter into par-

ticulars,

ticulars, and carefully examine into the conftitution of the ftate, into its eftablifhment and power, whether it be old or of late date, fucceffive or elective, acquired by legal methods or by arms; they fhould alfo fee how far this jurifdiction reaches, what neighbours are about them, what allies, and what ftrength and what conveniencies the ftate is provided with. For according to thefe confiderations the fcepter muft be fwayed, and the rider muft take care to keep a ftiffer or flacker rein.

X. 4°. Sovereigns ought alfo to endeavour to excel in fuch virtues as are moft neceffary to fupport the weight of fo important a charge, and to regulate their outward behaviour in a manner worthy of their rank and dignity.

XI. We have already fhewn that virtue in general confifts in that ftrength of mind, which enables us not only to confult right reafon on all occafions, but alfo to follow her counfels with eafe, and effectually to refift every thing capable of giving us a contrary biafs. This fingle idea of virtue is fufficient to fhew how neceffary it is to all men. But none have more duties to fulfil, none are more expofed to temptation, than fovereigns; and none of courfe have a greater neceffity for the affiftance of virtue. Befides, virtue in princes has this advantage, that it is the fureft method of infpiring their fubjects with the like principles. For this purpofe they need only fhew the way. The example of the prince has a greater force than the law. It is, as it were, a living law, of more efficacy than precept. But to defcend to particulars.

XII. The

XII. The virtues moſt neceſſary to ſovereigns are, 1°. *Piety*, which is certainly the foundation of all other virtues; but it muſt be a ſolid and rational piety, free from ſuperſtition and bigotry. In the high ſituation of ſovereigns, the only motive, which can moſt ſurely induce them to the diſcharge of their duty, is the fear of God. Without that, they will ſoon run into every vice which their paſſions dictate; and the people will become the innocent victims of their pride, ambition, avarice and cruelty. On the contrary, we may expect every thing that is good from a prince, who fears and reſpects God, as a ſupreme Being on whom he depends, and to whom he muſt one day give an account of his adminiſtration. Nothing can be ſo powerful a motive as this to engage princes to perform their duty, nothing can ſo well cure them of that dangerous miſtake, that being above other men, they may act as abſolute lords, as if they were not to render an account of their conduct, and be judged in their turn, after having paſſed ſentence on others.

XIII. 2°. The love of *Equity* and *Juſtice*. The principal end a prince was made for, is to take care that every one ſhould have his right. This ought to engage him to ſtudy not only the ſcience of thoſe great civilians who aſcend to the firſt principles of law, which regulate human ſociety, and are the baſis, as it were, of government and politics; but alſo that part of the law, which deſcends to the affairs of particular perſons. This branch is generally left for the gentlemen of the long robe, and not admitted into the education of princes, though they are every day to

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paſs judgment upon the fortunes, liberties, lives, honour and reputation of their ſubjects. Princes are continually talked to of valour and liberality; but if juſtice does not regulate theſe two qualities, they degenerate into the moſt odious vices: Without juſtice, valour does nothing but deſtroy; and liberality is only a fooliſh profuſeneſs. Juſtice keeps all in order, and contains within bounds him who diſtributes it, as well as thoſe to whom it is diſtributed.

XIV. 3°. *Valour.* But it muſt be ſet in motion by juſtice, and conducted by prudence. A prince ſhould expoſe his perſon to the greateſt perils as often as it is neceſſary. He diſhonours himſelf more by being afraid of danger in time of war, than by never taking the field. The courage of him who commands others, ought not to be dubious; but neither ought he to run headlong into danger. Valour can no longer be a virtue than as it is guided by prudence, otherwiſe it is a ſtupid contempt of life, and a brutal ardour. Inconſiderate valour is always inſecure. He, who is not maſter of himſelf in dangers, is rather fierce than brave; if he does not fly, he is at leaſt confounded. He loſes that preſence of mind which would be neceſſary for him to give proper orders, to take advantage of opportunities, and to rout the enemy. The true way of finding glory, is calmly to wait for the favourable occaſion. Virtue is the more revered, as ſhe ſhews herſelf plain, modeſt, and averſe to pride and oſtentation. In proportion as the neceſſity of expoſing yourſelf to danger augments, your foreſight and courage ought alſo to increaſe.

XV. 4°. A-

XV. 4°. Another virtue, very neceſſary in princes, is to be extremely reſerved in diſcovering their thoughts and deſigns. This is evidently neceſſary to thoſe who are concerned in government: It includes a wiſe diffidence, and an innocent diſſimulation.

XVI. 5°. A prince muſt, above all things, accuſtom himſelf to moderate his deſires. For as he has the power of gratifying them, if he once gives way to them, he will run to the greateſt exceſs, and by deſtroying his ſubjects, will at laſt complete his own ruin. In order to form himſelf to this moderation, nothing is more proper than to accuſtom himſelf to patience. This is the moſt neceſſary of all virtues for thoſe who are to command. A man muſt be patient to become maſter of himſelf and others. Impatience, which ſeems to be a vigorous exertion of the ſoul, is only a weakneſs and inability of ſuffering pain. He who cannot wait and ſuffer, is like a perſon that cannot keep a ſecret. Both want reſolution to contain themſelves. The more power an impatient man has, the more fatal his impatience will be to him. He will not wait; he gives himſelf no time to judge; he forces every thing to pleaſe himſelf; he tears off the boughs, to gather the fruit before it is ripe; he breaks down the gates, rather than ſtay till they are opened to him.

XVII. 6°. *Goodneſs* and *Clemency* are alſo virtues very neceſſary to a prince: His office is to do good, and it is for this end the ſupreme power is lodged in his hand. It is alſo principally by this that he ought to diſtinguiſh himſelf.

XVIII. 7°. *Li-*

XVIII. 7°. *Liberality*, well underſtood and well applied, is ſo much the more eſſential to a prince, as avarice is a diſgrace to a perſon whom it coſts almoſt nothing to be liberal. To take it exactly, a king, as a king, has nothing properly his own; for he owes his very ſelf to others. But on the other hand, no perſon ought to be more careful in regulating the exercife of this noble virtue. It requires great circumſpection, and ſuppoſes, in the prince, a juſt diſcernment and a good taſte to know how to beſtow and diſpenſe favours on proper perſons. He ought, above all things, to uſe this virtue for rewarding merit and virtue.

XIX. But liberality has its bounds, even in the moſt opulent princes. The ſtate may be compared to a family. The want of foreſight, profuſion of treaſure, and the voluptuous inclination of princes, who are the maſters of it, do more miſchief than the moſt ſkilful miniſters can repair.

XX. To reimburſe his treaſures, ſquandered away without neceſſity, and often in criminal exceſſes, he muſt have recourſe to expedients which are fatal to the ſubjects and the ſtate. He loſes the hearts of the people, and cauſes murmurs and diſcontents, which are ever dangerous, and of which an enemy may take advantage. Theſe are inconveniencies that even common ſenſe might point out, if the ſtrong propenſity to pleaſure, and the intoxication of power, did not often extinguiſh the light of reaſon in princes. To what cruelty and injuſtice did not the extravagant profuſions of Nero carry him? A prudent œconomy,

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on the contrary, ſupplies the deficiencies of the revenue, maintains families and ſtates, and preſerves them in a flouriſhing condition. By œconomy princes not only have money in time of need, but alſo poſſeſs the hearts of their ſubjects, who freely open their purſes upon any unforeſeen emergency, when they ſee that the prince has been ſparing in his expences; the contrary happens when he has ſquandered away his treaſures.

XXI. This is a general idea of the virtues moſt neceſſary to a ſovereign, beſides thoſe which are common to him with private people, and of which ſome are included even in thoſe we have been mentioning. Cicero follows almoſt the ſame ideas in the enumeration he makes of the royal virtues *.

XXII. It is by the aſſiſtance of theſe virtues, of which we here have given an idea, that ſovereigns are enabled to apply themſelves with ſucceſs to the functions of government, and to fulfil the different duties of it. Let us ſay ſomething more particular on the actual exerciſe of thoſe duties.

XXIII. There is a general rule which includes all the duties of a ſovereign, and by which he may eaſily judge how to proceed under every circumſtance. *Let the ſafety of the people be the ſupreme law.* This ought to be the chief end of all his actions. The ſupreme authority has been conferred

* Fortem, juſtum, ſeverum, gravem, magnanimum, largum, beneficum, liberalem dici, hæ ſunt regiæ laudes. *Orat. pro rege Dejotaro, cap.* 9.

upon

upon him with this view; and the fulfilling of it is the foundation of his right and power. The prince is properly the servant of the public. He ought, as it were, to forget himself, in order to think only on the advantage and good of those whom he governs. He ought not to look upon any thing as useful to himself, which is not so to the state. This was the idea of the heathen philosophers. They defined a good prince, one who endeavours to render his subjects happy; and a tyrant, on the contrary, one who aims only at his own private advantage.

XXIV. The very interest of the sovereign demands, that he should direct all his actions to the public good. By such a conduct he wins the hearts of his subjects, and lays the foundation of solid happiness and true glory.

XXV. Where the government is most despotic, there sovereigns are least powerful. They ruin every thing, and are the sole possessors of the whole country; but then the state languishes, because it is exhausted of men and money; and this first loss is the greatest and most irreparable. His subjects seem to adore him, and to tremble at his very looks: But see what will be the consequence upon the least revolution; then we find that this monstrous power, pushed to excess, cannot long endure, because it has no resource in the hearts of the people. On the first blow, the idol tumbles down and is trampled under foot. The king, who, in his prosperity, found not a man who durst tell him the truth, shall not find one, in his adversity, that will vouchsafe either to excuse,

excuſe, or defend him againſt his enemies. It is therefore equally eſſential to the happineſs of the people and of ſovereigns, that the latter ſhould follow no other rule in their manner of governing, than that of the public welfare.

XXVI. It is not difficult, from this general rule, to deduce thoſe of a more particular nature. The functions of the government relate either to the domeſtic intereſts of the ſtate, or to its foreign concerns.

XXVII. As for the domeſtic intereſts of the ſtate, the firſt care of the ſovereign ought to be, 1°. to form his ſubjects to good manners. For this purpoſe the duty of ſupreme rulers is, not only to preſcribe good laws, by which every one may know how he ought to behave, in order to promote the public good; but eſpecially to eſtabliſh the moſt perfect manner of public inſtruction, and of the education of youth. This is the only method of making the ſubjects conform to the laws both by reaſon and cuſtom, rather than through fear of puniſhment.

XXVIII. The firſt care of a prince therefore ought to be to erect public ſchools for the education of children, and for training them betimes to wiſdom and virtue. Children are the hope and ſtrength of a nation. It is too late to correct them when they are ſpoiled. It is infinitely better to prevent the evil, than to be obliged to puniſh it. The king, who is the father of all his people, is more particularly the father of all the youth, who are, as it were, the flower of the whole nation. And as it is in the

flower, that fruits are prepared, ſo it is one of the principal duties of the ſovereign to take care of the education of youth, and the inſtruction of his ſubjects, to plant the principles of virtue early in their minds, and to maintain and confirm them in that happy diſpoſition. It is not laws and ordinances, but good morals, that properly regulate the ſtate.

Quid leges ſine moribus
Vanæ proficiunt *.

And what are laws, unleſs obey'd
By the ſame moral virtues they were made?
Francis.

Thoſe who have had a bad education, make no ſcruple to violate the beſt political conſtitutions; whereas they who have been properly trained up, chearfully conform to all good inſtitutions. In fine, nothing is more conducive to ſo good an end in ſtates, than to inſpire the people in the earlier part of life with the principles of the Chriſtian religion, purged from all human invention. For this religion includes the moſt perfect ſcheme of morality, the maxims of which are extremely well adapted for promoting the happineſs of ſociety.

XXIX. 2°. The ſovereign ought to eſtabliſh good laws for the ſettling of ſuch affairs, as the ſubjects have moſt frequent occaſion to tranſact with each other. Theſe laws ought to be juſt, equitable, clear, without ambiguity and contradiction, uſeful, accommodated to the condition and the genius of the

* Horat. lib. iii. Od. 24. v. 35, 36.

 people,

people, at leaſt ſo far as the good of the ſtate will permit, that, by their means, differences may be eaſily determined: But they are not to be multiplied without neceſſity.

XXX. I ſaid, that laws ought to be *accommodated to the condition and genius of the people*; and for this reaſon I have before obſerved, that the ſovereign ought to be thoroughly inſtructed in this article; otherwiſe one of theſe two inconveniencies muſt happen, either that the laws are not obſerved, and then it becomes neceſſary to puniſh an infinite number of people, while the ſtate reaps no advantage from it; or that the authority of the laws is deſpiſed, and then the ſtate is on the brink of deſtruction.

XXXI. I mentioned alſo, that *laws ought not to be multiplied without neceſſity*; for this would only tend to lay ſnares for the ſubject, and expoſe him to inevitable puniſhments, without any advantage to the ſociety. In fine, it is of great importance to regulate what relates to the adminiſtration and ordinary forms of juſtice, ſo that every ſubject may have it in his power to recover his right, without loſing much time, or being at a great expence.

XXXII. 3°. It would be of no uſe to make good laws, if people were ſuffered to violate them with impunity. Sovereigns ought therefore to ſee them properly executed, and to puniſh the delinquents without exception of perſons, according to the quality and degree of the offence. It is even ſometimes proper to puniſh ſeverely at firſt. There are circum-

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ſtances in which it is clemency to make ſuch early examples, as ſhall ſtop the courſe of iniquity. But what is chiefly neceſſary, and what juſtice and the public good abſolutely require, is, that the ſeverity of the laws be exerciſed not only upon the ſubjects of moderate fortune and condition, but alſo upon the wealthy and powerful. It would be unjuſt that reputation, nobility, and riches, ſhould authorize any one to inſult thoſe who are deſtitute of theſe advantages. The populace are often reduced by oppreſſion to deſpair, and their fury at laſt throws the ſtate into convulſions.

XXXIII. 4°. Since men firſt joined in civil ſocieties to ſkreen themſelves from the injuries and malice of others, and to procure all the ſweets and pleaſures which can render life commodious and happy; the ſovereign is obliged to hinder the ſubjects from wronging each other, to maintain order and peace in the community by a ſtrict execution of the laws, to the end that his ſubjects may obtain the advantages which mankind can reaſonably propoſe to themſelves by joining in ſociety. When the ſubjects are not kept within rule, their perpetual intercourſe eaſily furniſhes them with opportunities of injuring one another. But nothing is more contrary to the nature and end of civil government, than to permit ſubjects to do themſelves juſtice, and, by their own private force, to revenge the injuries they think they have ſuffered. We ſhall here add a beautiful paſſage from Mr. de la Bruiere upon this ſubject *.

* Characters and manners of the preſent age, chap. x. of the ſovereign.

"What would it avail me, or any of my fellow-"subjects, that my sovereign was succefsful and "crowned with glory, that my country was power-"ful and the terror of neighbouring nations, if I "were forced to lead a melancholy and miserable "life under the burthen of oppression and indigence? "If, while I was secured from the incursions of a "foreign enemy, I found myself exposed at home "to the sword of an assassin, and was less in danger "of being robbed or massacred in the darkest nights, "and in a thick forest, than in the public streets? "If safety, cleanliness, and good order, had not "rendered living in towns so pleasant, and had not "only furnished them with the necessaries, but "moreover with all the sweets and conveniencies "of life? If, being weak and defenceless, I were "encroached upon in the country, by every neigh-"bouring great man? If so good a provision had "not been made to protect me against his injus-"tice? If I had not at hand so many, and such excel-"lent masters, to educate my children in those arts "and sciences which will one day make their for-"tune? If the conveniency of commerce had not "made good substantial stuffs for my cloathing, "and wholesome food for my nourishment, both "plentiful and cheap? If, to conclude, the care of "my sovereign had not given me reason to be as "well contented with my fortune, as his princely "virtues must needs make him with his?"

XXXIV. 5°. Since a prince can neither see nor do every thing himself, he must have the assistance of ministers: But these, as they derive their whole

authority from their maſter, all the good or evil they do is finally imputed to him. It is therefore the duty of ſovereigns to chuſe perſons of integrity and ability for the employments with which they entruſt them. They ought often to examine their conduct, and to puniſh or recompenſe them, according to their merits. In fine, they ought never to refuſe to lend a patient ear to the humble remonſtrances and complaints of their ſubjects, when they are oppreſſed and trampled on by miniſters and ſubordinate magiſtrates.

XXXV. 6°. With regard to ſubſidies and taxes, ſince the ſubjects are not obliged to pay them, but as they are neceſſary to defray the expences of the ſtate, in war or peace; the ſovereign ought to exact no more than the public neceſſities, or the ſignal advantage of the ſtate, ſhall require. He ought alſo to ſee that the ſubjects be incommoded as little as poſſible by the taxes laid upon them. There ſhould be a juſt proportion in the tax of every individual, and there muſt be no exception or immunity which may turn to the diſadvantage of others. The money collected ought to be laid out in the neceſſities of the ſtate, and not waſted in luxury, debauchery, fooliſh largeſſes, or vain magnificence. Laſtly, the expences ought to be proportioned to the revenue.

XXXVI. 7°. It is the duty of a ſovereign to draw no farther ſupplies from his ſubjects than he really ſtands in need of: The wealth of the ſubjects forms the ſtrength of the ſtate, and the advantage of fami-

lies and individuals. A prince therefore ought to neglect nothing that can contribute to the preservation and increase of the riches of his people. For this purpose he should see that they draw all the profit they can from their lands and waters, and keep themselves always employed in some industrious exercise or other. He ought to further and promote the mechanic arts, and give all possible encouragement to commerce. It is likewise his duty to bring his subjects to a frugal method of living by good sumptuary laws, which may forbid superfluous expences, and especially those by which the wealth of the natives is translated to foreigners.

XXXVII. 8°. Lastly, it is equally the interest and duty of a supreme governor, to guard against factions and cabals; from whence seditions and civil wars easily arise. But, above all, he ought to take care that none of his subjects place a greater dependance, even under the pretext of religion, on any other power, either within or without the realm, than on his lawful sovereign. This in general is the law of the public good in regard to the domestic interests, or internal tranquillity of the state.

XXXVIII. As to foreign concerns, the principal duties of the king are,

1°. To live in peace with his neighbours as much as he possibly can.

2°. To conduct himself with prudence in regard to the alliances and treaties he makes with other powers.

3°. To adhere faithfully to the treaties he has made.

4°. Not

4°. Not to ſuffer the courage of his ſubjects to be enervated, but, on the contrary, to maintain and augment it by good diſcipline.

5°. In due and ſeaſonable time to make the preparations neceſſary to put himſelf in a poſture of defence.

6°. Not to undertake any unjuſt or raſh war.

7°. Laſtly, even in times of peace to be very attentive to the deſigns and motions of his neighbours.

XXXIX. We ſhall ſay no more of the duties of ſovereigns. It is ſufficient at preſent to have pointed out the general principles, and collected the chief heads: what we have to ſay hereafter concerning the different parts of ſovereignty, will give the reader a more diſtinct idea of the particular duties attending it.

The END *of the* SECOND PART.

THE PRINCIPLES OF POLITIC LAW.

PART III.

A more particular examination of the essential parts of sovereignty, or of the different rights of the sovereign, with respect to the internal administration of the state, such as the legislative power, the supreme power in matters of religion, the right of inflicting punishments, and that which the sovereign has over the Bona Reipublicæ, *or the goods contained in the commonwealth.*

CHAP. I.

Of the legislative power, and the civil laws which arise from it.

I. WE have hitherto explained what relates to the nature of civil society in general, of government, and of sovereignty, which is the soul of it. Nothing remains to compleat the plan we laid down, but

but more particularly to examine the different parts of ſovereignty, as well thoſe which directly regard the internal adminiſtration of the ſtate, as thoſe which relate to its intereſts abroad, or to its concerns with foreign powers, which will afford us an opportunity of explaining the principal queſtions relating to thoſe ſubjects; and to this purpoſe we deſign this and the ſubſequent part.

II. Among the eſſential parts of ſovereignty, we have given the firſt rank to the *legiſlative power*, that is to ſay, the right which the ſovereign has of giving laws to his ſubjects, and of directing their actions, or of preſcribing the manner in which they ought to regulate their conduct; and it is from hence the civil laws are derived. As this right of the ſovereign is, as it were, the eſſence of ſovereignty, order requires that we ſhould begin with the explication of whatever relates to it.

III. We ſhall not here repeat what we have elſewhere ſaid of the nature of laws in general: But, ſuppoſing the principles we have eſtabliſhed on that head, we ſhall only examine the nature and extent of the legiſlative power in ſociety, and that of the civil laws and decrees of the ſovereign from thence derived.

IV. *Civil laws* then are all thoſe ordinances by which the ſovereign binds his ſubjects. The aſſemblage or body of thoſe ordinances is what we call the *Civil Law*. In fine, civil juriſprudence is that ſcience or art, by which the civil laws are not only eſtabliſhed, but

but explained in caſe of obſcurity, and are properly applied to human actions.

V. The eſtabliſhment of civil ſociety ought to be fixed, ſo as to make a ſure and undoubted proviſion for the happineſs and tranquillity of man. For this purpoſe it was neceſſary to eſtabliſh a conſtant order, and this could only be done by fixed and determinate laws.

VI. We have already obſerved, that it was neceſſary to take proper meaſures to render the laws of nature as effectual as they ought to be, in order to promote the happineſs of ſociety; and this is effected by means of the civil laws.

For, 1°. They ſerve to make the laws of nature better known.

2°. They give them a new degree of force, and render the obſervance of them more ſecure, by means of their ſanction, and of the puniſhments which the ſovereign inflicts on thoſe who deſpiſe and violate them.

3°. There are ſeveral things which the law of nature preſcribes only in a general and indeterminate manner; ſo that the time, the manner, and the application to perſons, are left to the prudence and diſcretion of every individual. It was however neceſſary, for the order and tranquillity of the ſtate, that all this matter ſhould be regulated; which is done by the civil laws.

4°. They alſo ſerve to explain any obſcurity that may ariſe in the maxims of the law of nature.

5°. They qualify or reſtrain, in various ways, the uſe of thoſe rights which every man naturally poſſeſſes.

6°. Laſtly, they determine the forms that are to be obſerved, and the precautions which ought to be taken, to render the different engagements that people enter into with each other effectual and inviolable; and they aſcertain the manner in which a man is to proſecute his rights in the civil court.

VII. In order therefore to form a juſt idea of the civil laws, we muſt ſay, that as civil ſociety is no other than natural ſociety itſelf, qualified or reſtrained by the eſtabliſhment of a ſovereign whoſe buſineſs it is to maintain peace and order; in like manner the civil laws are thoſe of nature, perfected in a manner ſuitable to the ſtate and advantages of ſociety.

VIII. As this is the caſe, we may very properly diſtinguiſh two ſorts of civil laws. Some are ſuch with reſpect to their authority only, and others with regard to their original. To the former claſs, we refer all the natural laws which ſerve as rules in civil courts, and which are alſo confirmed by a new ſanction of the ſovereign. Such are all laws which determine the crimes that are to be puniſhed by the civil juſtice; and the obligations upon which an action may commence in the civil court, &c.

As to the civil laws, ſo called, becauſe of their original, theſe are arbitrary decrees, which, for their foundation, have only the will of the ſovereign, and ſuppoſe certain human eſtabliſhments; or which regulate things relating to the particular advantage of the ſtate, though indifferent in themſelves, and undetermined by the law of nature. Such are the laws which preſcribe the neceſſary forms in contracts

and

and teſtaments, the manner of proceeding in courts of juſtice, &c. But it muſt be obſerved, that all thoſe regulations ſhould tend to the good of the ſtate as well as of individuals, ſo that they are properly appendages to the law of nature.

IX. It is of great importance carefully to diſtinguiſh in the civil laws, what is natural and eſſential in them, from what is only adventitious. Thoſe laws of nature, the obſervance of which is eſſentially conducive to the peace and tranquillity of mankind, ought certainly to have the force of law in all ſtates; neither is it in the power of the prince to abrogate them. As to the others, which do not ſo eſſentially intereſt the happineſs of ſociety, it is not always expedient to give them the force of law, becauſe the controverſies about the violation of them would often be very perplexed and intricate, and likewiſe lay a foundation for an infinite number of litigious ſuits. Beſides, it was proper to give the good and virtuous an opportunity of diſtinguiſhing themſelves by the practice of thoſe duties, the violation of which incurs no human penalties.

X. What we have ſaid of the nature of civil laws ſufficiently ſhews, that though the legiſlative be a *ſupreme*, yet it is not an *arbitrary* power; but, on the contrary, it is limited in ſeveral reſpects.

1°. And as the ſovereign holds the legiſlative power originally of the will of each member of the ſociety, it is evident, that no man can confer on another a right which he has not himſelf; and conſequently the legiſlative power cannot be extended beyond this limit.

limit. The ſovereign therefore can neither command nor forbid any other actions than ſuch as are either voluntary or poſſible.

2°. Beſides, the natural laws diſpoſe of human actions antecedently to the civil laws, and men cannot recede from the authority of the former. Therefore, as thoſe primitive laws limit the power of the ſovereign, he can determine nothing ſo as to bind the ſubject contrary to what they either expreſsly command or forbid.

XI. But we muſt be careful not to confound two things entirely diſtinct, I mean the *State of Nature*, and the *Laws of Nature*. The primitive and natural ſtate of man may admit of different changes and modifications, which are left to the diſpoſal of man, and have nothing contrary to his obligations and duties. In this reſpect, the civil laws may produce a few changes in the natural ſtate, and conſequently make ſome regulations unknown to the law of nature, without containing any thing contrary to that law, which ſuppoſes the ſtate of liberty in its full extent, but nevertheleſs permits mankind to limit and reſtrain that ſtate, in the manner which appears moſt to their advantage.

XII. We are however far from being of the opinion of thoſe writers *, who pretend that it is impoſſible the civil laws ſhould be repugnant to that of nature, *becauſe*, ſay they, *there is nothing either juſt or unjuſt antecedently to the eſtabliſhment of thoſe laws.* What we have above advanced, and the principles

* Hobbes.

we have eftablifhed in the whole courfe of this work, fufficiently evince the abfurdity of this opinion.

XIII. It is as ridiculous to affert, that before the eftablifhment of civil laws and fociety, there was no rule of juftice to which mankind were fubject, as to pretend that truth and rectitude depend on the will of man, and not on the nature of things. It would have even been impoffible for mankind to found focieties of any durability, if, antecedently to thofe focieties, there had been neither juftice nor injuftice, and if they had not, on the contrary, been perfuaded that it was juft to keep their word, and unjuft to break it.

XIV. Such in general is the extent of the legiflative power, and the nature of the civil laws, by which that power exerts itfelf. Hence it follows, that the whole force of civil laws confifts in two things, namely, in their *Juftice* and in their *Authority*.

XV. The authority of the laws confifts in the force given them by the perfon, who, being invefted with the legiflative power, has a right to enact thofe laws; and in the Divine Will which commands us to obey him. With regard to the juftice of civil laws, it depends on their relation to the good order of fociety, of which they are the rule, and on the particular advantage of eftablifhing them, according as different conjunctures may require.

XVI. And fince the fovereignty, or right of commanding,

manding, is naturally founded on a *beneficent Power*, it neceſſarily follows, that the *Authority* and *Juſtice* of laws are two characteriſtics eſſential to their nature, in default of which they can produce no real obligation. The power of the ſovereign conſtitutes the authority of his laws, and his beneficence permits him to make none but ſuch as are conformable to equity.

XVII. However certain and inconteſtable theſe general principles may be, yet we ought to take care not to abuſe them in the application. It is certainly eſſential to every law that it ſhould be equitable and juſt; but we muſt not from thence conclude, that private ſubjects have a right to refuſe obedience to the commands of the ſovereign, under a pretence that they do not think them altogether juſt. For, beſides that ſome allowance is to be made for human infirmity, the oppoſing the legiſlative power which conſtitutes the whole ſafety of the public, muſt evidently tend to the ſubverſion of ſociety; and ſubjects are obliged to ſuffer the inconveniencies which may ariſe from ſome unjuſt laws, rather than expoſe the ſtate to ruin by their diſobedience.

XVIII. But, if the abuſe of the legiſlative power proceeds to exceſs, and to the ſubverſion of the fundamental principles of the laws of nature, and of the duties which it enjoins, it is certain that, under ſuch circumſtances, the ſubjects are, by the laws of God, not only authorized, but even obliged to refuſe obedience to all laws of this kind.

XIX. But

XIX. But this is not ſufficient. That the laws may be able to impoſe a real obligation, and reckoned juſt and equitable, it is neceſſary the ſubjects ſhould have a perfect knowledge of them; now they cannot of themſelves know the civil laws, at leaſt thoſe of an arbitrary nature; theſe are, in ſome meaſure, facts of which the people may be ignorant. The ſovereign ought therefore to declare his will, and to adminiſter laws and juſtice, not by arbitrary and haſty decrees, but by mature regulations, duly promulgated.

XX. Theſe principles furniſh us with a reflection of great importance to ſovereigns. Since the firſt quality of laws is, that they be known, ſovereigns ought to publiſh them in the cleareſt manner. In particular, it is abſolutely neceſſary that the laws be written in the language of the country; nay, it is proper that public profeſſors ſhould not uſe a foreign language in their lectures on juriſprudence. For what can be more repugnant to the principle which directs, that the laws ſhould be perfectly known, than to make uſe of laws, written in a dead language, which the generality of the people do not underſtand; and to render the knowledge of thoſe laws attainable only in that language? I cannot help ſaying, that this is an abſurd practice, equally contrary to the glory of ſovereigns, and to the advantage of ſubjects.

XXI. If we therefore ſuppoſe the civil laws to be accompanied with the conditions above-mentioned, they have certainly the force of obliging the ſubjects to

to obſerve them. Every individual is bound to ſubmit to their regulations, ſo long as they include nothing contrary to the divine law, whether natural or revealed; and this not only from a dread of the puniſhments annexed to the violation of them, but alſo from a principle of conſcience, and in conſequence of a maxim of natural law, which commands us to obey our lawful ſovereign.

XXII. In order rightly to comprehend this effect of the civil laws, it is to be obſerved, that the obligation, which they impoſe, extends not only to external actions, but alſo to the inward ſentiments. The ſovereign, by preſcribing laws to his ſubjects, propoſes to render them wiſe and virtuous. If he commands a good action, he is willing it ſhould be done from principle; and when he forbids a crime, he not only prohibits the external action, but alſo the deſign or intention.

XXIII. In fact, man being a free agent, is induced to act only in conſequence of his judgment, by a determination of his will. As this is the caſe, the moſt effectual means, which the ſovereign can employ to procure the public happineſs and tranquillity, is to work upon the mind, by diſpoſing the hearts of his ſubjects to wiſdom and virtue.

XXIV. Hence it is, that public eſtabliſhments are formed for the education of youth. Academies and profeſſors are appointed for this purpoſe. The end of theſe inſtitutions is to inform and inſtruct man-

kind, and to make them early acquainted with the rules of a happy and virtuous life. Thus the sovereign, by means of inftruction, has an effectual method of inftilling juft ideas and notions into the minds of his fubjects; and by thefe means his authority has a very great influence upon the internal actions, the thoughts, and inclinations of thofe who are fubjected to the direction of his laws, fo far at leaft as the nature of the thing will permit.

XXV. We fhall clofe this chapter with the difcuffion of a queftion which naturally prefents itfelf in this place.

Some afk, whether a fubject can innocently execute the unjuft commands of a fovereign, or if he ought not rather to refufe abfolutely to obey him, even at the hazard of his life? Puffendorf feems to anfwer this queftion with a kind of hefitation, but at length he declares for the opinion of Hobbes in the following manner. We muft diftinguifh, he fays, whether the fovereign commands us in our own name to do an unjuft action, which may be accounted our own; or, whether he orders us to perform it in his name, as inftruments in the execution of it, and as an action which he accounts his own. In the latter cafe, he pretends that we may, without fcruple, execute the action ordered by the fovereign, who is then to be confidered as the only author of it. Thus, for example, foldiers ought to execute the orders of their prince, becaufe they do not act in their own name, but as inftruments and in the name of their mafter. But,

But, on the contrary, it is never lawful to do in our own name, an action that our conſcience tells us is unjuſt or criminal. Thus, for inſtance, a judge, whatever orders he may have from the prince, ought never to condemn an innocent perſon, nor a witneſs depoſe againſt the truth.

XXVI. But, in my opinion, this diſtinction does not remove the difficulty; for in whatever manner we pretend that a ſubject acts in thoſe caſes, whether in his own name, or in that of his prince, his will concurs in ſome manner or other to the unjuſt and criminal action, which he executes by order of the ſovereign. We muſt therefore impute either both actions partly to him, or elſe none at all.

XXVII. The ſureſt way then, is to diſtinguiſh between a caſe where the prince commands a thing evidently unjuſt, and where the matter is doubtful. As to the former, we muſt generally, and without any reſtriction, maintain, that the greateſt menaces ought never to induce us, even by the order and in the name of the ſovereign, to do a thing which appears to us evidently unjuſt and criminal; and though we may be very excuſable in the ſight of man for having been overcome by ſuch a ſevere trial, yet we ſhall not be ſo before the Divine tribunal.

XXVIII. Thus a parliament, for inſtance, commanded by the prince to regiſter an edict manifeſtly unjuſt, ought certainly to refuſe it. The ſame I ſay

of a minifter of ftate, whom a prince would oblige to execute a tyrannical or iniquitous order; of an ambaffador whofe mafter gives him inftructions contrary to honour and juftice; or of an officer, whom the fovereign fhould command to kill a perfon whofe innocence is as clear as the noon-day. In thofe cafes we fhould nobly exert our courage, and with all our might refift injuftice, even at the peril of our lives. *It is better to obey God than men.* For, in promifing obedience to the fovereign, we could never do it but on condition, that he fhould not order any thing manifeftly contrary to the laws of God, whether natural or revealed. To this purpofe there is a beautiful paffage in a tragedy written by Sophocles. "I did not believe (fays Antigone to "Creon king of Thebes) that the edicts of a mor- "tal man, as you are, could be of fuch force, "as to fuperfede the laws of the gods themfelves, "laws not written indeed, but certain and im- "mutable; for they are not of yefterday or to-day, "but eftablifhed perpetually and for ever, and "no one knows when they began. I ought not "therefore, for fear of any man, to expofe my- "felf, by violating them, to the punifhment of the "gods *."

XXIX. But in cafes where the matter is doubtful, the beft refolution is certainly to obey. The duty of obedience, being a clear obligation, ought to fuperfede all doubt. Otherwife, if the obligation of the fubjects, to comply with the commands of their fovereign, permitted them to fufpend their

* Sophocl. Antigon. ver. 463, &c.

obedience

obedience till they were convinced of the juſtice of his commands; this would manifeſtly annihilate the authority of the prince, and ſubvert all order and government. It would be neceſſary that ſoldiers, executioners, and other inferior officers of court, ſhould underſtand politics and the civil law, otherwiſe they might excuſe themſelves from their duty of obedience, under the pretence that they are not ſufficiently convinced of the juſtice of the orders given them; and this would render the prince incapable of exerciſing the functions of government. It is therefore the duty of the ſubject to obey in thoſe circumſtances; and if the action be unjuſt in itſelf, it cannot be imputed to him, but the whole blame falls on the ſovereign.

XXX. Let us here collect the principal views which the ſovereign ought to have in the enacting of laws.

1°. He ſhould pay a regard to thoſe primitive rules of juſtice which God himſelf has eſtabliſhed, and take care that his laws be perfectly conformable to thoſe of the Deity.

2°. The laws ſhould be of ſuch a nature, as to be eaſily followed and obſerved. Laws, too difficult to be put in execution, are apt to ſhake the authority of the magiſtrate, or to lay a foundation for inſurrections.

3°. No laws ought to be made in regard to uſeleſs and unneceſſary things.

4°. The laws ought to be ſuch, that the ſubjects may be inclined to obſerve them rather of their own accord than through neceſſity. For this reaſon, the

ſovereign ſhould only make ſuch laws as are evidently uſeful, or at leaſt he ſhould explain and make known to the ſubjects, the reaſons and motives that have induced him to enact them.

5°. He ought not to be eaſily perſuaded to change the eſtabliſhed laws. Frequent changes in the laws certainly leſſens their authority, as well as that of the ſovereign.

6°. The prince ought not to grant diſpenſations without very good reaſon; otherwiſe he weakens the laws, and lays a foundation for jealouſies, which are ever prejudicial to the ſtate and to individuals.

7°. Laws ſhould be ſo contrived as to be aſſiſting to each other, that is to ſay, ſome ſhould be preparatory to the obſervance of others, in order to facilitate their execution. Thus, for example, the ſumptuary laws, which preſcribe bounds to the expences of the ſubject, contribute greatly to the execution of thoſe ordinances, which impoſe taxes and public contributions.

8°. A prince, who would make new laws, ought to be particularly attentive to time and conjunctures.

On this principally depends the ſucceſs of a new law, and the manner in which it is received.

9°. In fine, the moſt effectual ſtep a ſovereign can take to enforce his laws, is to conform to them himſelf, and to ſhew the firſt example, as we have before obſerved.

CHAP.

CHAP. II.

Of the right of judging the doctrines taught in the state: Of the care which the sovereign ought to take to form the manners of his subjects.

I. IN the enumeration of the essential parts of sovereignty, we have comprehended the right of judging of the doctrines taught in the state, and particularly of every thing relating to religion. This is one of the most considerable prerogatives of the sovereign, which it behoves him to exert according to the rules of justice and prudence. Let us endeavour to shew the necessity of this prerogative, to establish its foundations, and to point out its extent and boundaries.

II. The first duty of the sovereign ought to be to take all possible pains to form the hearts and minds of his people. In vain would it be for him to enact the best laws, and to prescribe rules of conduct in every thing relative to the good of society, if he did not moreover take proper measures to convince his people of the justice and necessity of those rules, and of the advantages naturally arising from the strict observance of them.

III. And indeed, since the principle of all human actions is the will, and the acts of the will depend on the ideas we form of good and evil, as well as of the rewards and punishments, which must follow

thoſe acts, ſo that every one is determined by his own judgment; it is evident that the ſovereign ought to take care that his ſubjects be properly inſtructed from their infancy, in all thoſe principles which can form them to an honeſt and ſober life, and in ſuch doctrines as are agreeable to the end and inſtitution of ſociety. This is the moſt effectual means of inducing men to a ready and ſure obedience, and of forming their manners. Without this, the laws would not have a ſufficient force to reſtrain the ſubject within the bounds of his duty. So long as men do not obey the laws from principle, their ſubmiſſion is precarious, and uncertain; and they will be ever ready to withdraw their obedience, when they are perſuaded they can do it with impunity.

IV. If therefore people's manner of thinking, or the ideas and opinions commonly received, and to which they are accuſtomed, have ſo much influence on their conduct, and ſo ſtrongly contribute either to the good or evil of the ſtate; and if it be the duty of the ſovereign to attend to this article, he ought to neglect nothing that can contribute to the education of youth, to the advancement of the ſciences, and to the progreſs of truth. If this be the caſe, we muſt needs grant him a right of judging of the doctrines publicly taught, and of proſcribing all thoſe which may be oppoſite to the public good and tranquillity.

V. It belongs therefore to the ſovereign alone to eſtabliſh academies and public ſchools of all kinds, and to authorize the reſpective profeſſors. It is his

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bufinefs to take care that nothing be taught in them, under any pretext, contrary to the fundamental maxims of natural law, to the principles of religion or good politics; in a word, nothing capable of producing impreffions prejudicial to the happinefs of the ftate.

VI. But fovereigns ought to be particularly delicate as to the manner of ufing this prerogative, and not to exert it beyond its juft bounds, but to ufe it only according to the rules of juftice and prudence, otherwife great abufes will follow. Thus a particular point or article may be mifapprehended, as detrimental to the ftate, while, in the main, it no way prejudices, but rather is advantageous to fociety; or princes, whether of their own accord, or at the inftigation of wicked minifters, may erect inquifitions with refpect to the moft indifferent and even the trueft opinions, efpecially in matters of religion.

VII. Supreme rulers cannot therefore be too much on their guard, againft fuffering themfelves to be impofed on by wicked men, who, under a pretext of public good and tranquillity, feek only their own particular interefts, and who ufe their utmoft efforts to render opinions obnoxious, only with a view to ruin men of greater probity than themfelves.

VIII. The advancement of the fciences, and the progrefs of truth, require that a reafonable liberty fhould be granted to all thofe who bufy themfelves in fuch laudable purfuits, and that we fhould not condemn

condemn a man as a criminal, merely becauſe on certain ſubjects he has ideas different from thoſe commonly received. Beſides, a diverſity of ideas and opinions, is ſo far from obſtructing, that it rather facilitates, the progreſs of truth; provided however that ſovereigns take proper meaſures to oblige men of letters to keep within the bounds of moderation, and that juſt reſpect which mankind owe to one another; and that they exert their authority in checking thoſe who grow too warm in their diſputes, and break through all rules of decency, ſo as to injure, calumniate, and render ſuſpected every one that is not in their way of thinking. We muſt admit, as an indubitable maxim, that truth is of itſelf very advantageous to mankind, and to ſociety, that no true opinion is contrary to peace and good order, and that all thoſe notions, which, of their nature, are ſubverſive of good order, muſt certainly be falſe; otherwiſe we muſt aſſert, that peace and concord are repugnant to the laws of nature.

CHAP.

CHAP. III.

Of the power of the ſovereign in matters of religion.

I. THE power of the ſovereign, in matters of religion, is of the laſt importance. Every one knows the diſputes which have long ſubſiſted on this topic between the empire and the prieſthood, and how fatal the conſequences of it have been to ſtates. Hence it is equally neceſſary, both to ſovereigns and ſubjects, to form juſt ideas on this article.

II. My opinion is, that the ſupreme authority in matters of religion, ought neceſſarily to belong to the ſovereign; and the following are my reaſons for this aſſertion.

III. I obſerve, 1°. that if the intereſt of ſociety requires that laws ſhould be eſtabliſhed in relation to human affairs, that is, to things which properly and directly intereſt only our temporal happineſs; this ſame intereſt cannot permit, that we ſhould altogether neglect our ſpiritual concerns, or thoſe which regard religion, and leave them without any regulation. This has been acknowledged in all ages, and among all nations; and this is the origin of the *civil Law* properly ſo called, and of the *ſacred* or *eccleſiaſtic Law*. All civilized nations have eſtabliſhed theſe two ſorts of law.

IV. But if matters of religion have, in ſeveral reſpects, need of human regulation, the right of deter-

mining them in the laſt reſort can belong only to the ſovereign.

Firſt Proof. This is inconteſtably proved by the very nature of ſovereignty, which is no more than the right of determining in the laſt reſort, and conſequently admits of no power in the ſociety it governs, either ſuperior to, or exempt from, its juriſdiction, but embraces, in its full extent, every thing that can intereſt the happineſs of the ſtate, both *ſacred* and *profane.*

V. The nature of ſovereignty cannot permit any thing, ſuſceptible of human direction, to be withdrawn from its authority; for what is withdrawn from the authority of the ſovereign, muſt either be left independent, or ſubjected to ſome other perſon different from the ſovereign himſelf.

VI. Were no rule eſtabliſhed in matters of religion, this would be throwing it into a confuſion and diſorder, quite contrary to the good of ſociety, the nature of religion, and the views of the Deity, who is the author of it. But, if we ſubmit theſe matters to an authority independent of that of the ſovereign, we fall into another inconveniency, ſince thus we eſtabliſh, in the ſame ſociety, two ſovereign powers independent of each other, which is not only incompatible with the nature of ſovereignty, but a contradiction in itſelf.

VII. And indeed, if there were ſeveral ſovereigns in the ſame ſociety, they might alſo give contrary orders. But who does not perceive that oppoſite orders,

orders, with respect to the same affair, are manifestly repugnant to the nature of things, and cannot have their effect, nor produce a real obligation? How would it be possible, for instance, that a man, who receives different orders at the same time from two superiors, such as to repair to the camp, and to go to church, should be obliged to obey both? If it be said that he is not obliged to comply with both, there must therefore be some subordination of the one to the other, the inferior will yield to the superior, and it will not be true that they are both sovereign and independent. We may here very properly apply the words of *Christ*. *No man can serve two masters; and a kingdom divided against itself cannot stand.*

VIII. *Second Proof.* I draw my second proof from the end of civil society and sovereignty. The end of sovereignty is certainly the happiness of the people, and the preservation of the state. Now, as religion may several ways either injure or benefit the state, it follows, that the sovereign has a right over religion, at least so far as it can depend on human direction. He, who has a right to the *end*, has, undoubtedly, a right also to the *means*.

IX. Now that religion may several ways injure or benefit the state, we have already proved in the first volume of this work.

1°. All men have constantly acknowledged, that the Deity makes his favours to a state depend principally on the care which the sovereign takes to induce his subjects to honour and serve him.

2°. Reli-

2°. Religion can of itſelf contribute greatly to render mankind more obedient to the laws, more attached to their country, and more honeſt towards one another.

3°. The doctrines and ceremonies of religion have a conſiderable influence on the morals of people, and on the public happineſs. The ideas which mankind imbibed of the Deity, have often miſled them to the moſt prepoſterous forms of worſhip, and prompted them to ſacrifice human victims. They have even, from thoſe falſe ideas, drawn arguments in juſtification of vice, cruelty, and licentiouſneſs, as we may ſee by reading the ancient poets. Since religion therefore has ſo much influence over the happineſs or miſery of ſociety, who can doubt but it is ſubject to the direction of the ſovereign?

X. *Third Proof.* What we have been affirming evinces, that it is incumbent on the ſovereign to make religion, which includes the moſt valuable intereſts of mankind, the principal object of his care and application. He ought to promote the eternal, as well as the preſent and temporal happineſs of his ſubjects: This is therefore a point properly ſubject to his juriſdiction.

XI. *Fourth Proof.* In fine, we can in general acknowledge only two ſovereigns, God and the prince. The ſovereignty of God is a tranſcendent, univerſal, and abſolute ſupremacy, to which even princes themſelves are ſubject; the ſovereignty of the prince holds the ſecond rank, and is ſubordinate to that of God, but in ſuch a manner, that the prince has

has a right to regulate every thing, which interefts the happinefs of fociety, and by its nature is fufceptible of human direction.

XII. After having thus eftablifhed the right of the fovereign in matters of religion, let us examine into the extent and bounds of this prerogative; whereby it will appear, that thefe bounds are not different from thofe which the fovereignty admits in all other matters. We have already obferved, that the power of the fovereign extended to every thing fufceptible of human direction. Hence it follows, that the firft boundary we ought to fix to the authority of the fovereign, but which indeed is fo obvious as fcarce needs mentioning, is, that he can order nothing impoffible in its nature, either in religion, or any thing elfe; as for example, to fly into the air, to believe contradictions, &c.

XIII. The fecond boundary, but which does not more particularly intereft religion than every thing elfe, is deduced from the Divine laws: for it is evident, that all human authority being fubordinate to that of God; whatever the Deity has determined by fome law, whether *natural* or *pofitive*, cannot be changed by the fovereign. This is the foundation of that maxim, *It is better to obey God than men.*

XIV. It is in confequence of thefe principles, that no human authority can, for example, forbid the preaching of the gofpel, or the ufe of the facraments, nor eftablifh a new article of faith, nor intro-

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duce a new worſhip: for God having given us a rule of religion, and forbidden us to alter this rule, it is not in the power of man to do it; and it would be abſurd to imagine that any perſon whatever can either believe or practice a thing as conducive to his ſalvation, in oppoſition to the Divine declaration.

XV. It is alſo on the footing of the limitations here eſtabliſhed, that the ſovereign cannot lawfully aſſume to himſelf an empire over conſciences, as if it were in his power to impoſe the neceſſity of believing ſuch or ſuch an article in matters of religion. Nature itſelf and the divine laws are equally contrary to this pretenſion. It is therefore no leſs abſurd than impious to endeavour to conſtrain conſciences, and to propagate religion by force of arms. The natural puniſhment of thoſe who are in an error is to be taught*. As for the reſt, we muſt leave the care of the ſucceſs to God

XVI. The authority of the ſovereign, in matters of religion, cannot therefore extend beyond the bounds we have aſſigned to it; but theſe are the only bounds, neither do I imagine it poſſible to think of any others. But what is principally to be obſerved, is, that theſe limits of the ſovereign power, in matters of religion, are not different from thoſe he ought to acknowledge in every other matter; on the contrary, they are preciſely the ſame; and equally agree with all the parts of the ſove-

* Errantis pœna eſt doceri.

reignty,

reignty, being no lefs applicable to common fubjects than to thofe of religion. For example, it would be no more lawful for a father to neglect the education of his children, though the prince fhould order him to neglect it, than it would be for paftors or Chriftians to abandon the fervice of God, even if they had been commanded fo to do by an impious fovereign. The reafon of this is, becaufe the law of God prohibits both, and this law is fuperior to all human authority.

XVII. However, though the power of the fovereign, in matters of religion, cannot change what God has determined, we may affirm, that thofe very things are, in fome meafure, fubmitted to the authority of the fovereign. Thus, for example, the prince has certainly a right to remove the external obftacles which may prevent the obfervance of the laws of God, and to make fuch an obfervance eafy. This is even one of his principal duties. Hence alfo arifes his prerogative of regulating the functions of the clergy and the circumftances of external worfhip, that the whole may be performed with greater decency, fo far, at leaft, as the law of God has left thefe things to human direction. In a word, it is certain that the fupreme magiftrate may alfo give an additional degree of force and obligation to the divine laws, by temporal rewards and punifhments. We muft therefore acknowledge the right of the fovereign in regard to religion, and that this right cannot belong to any power on earth.

XVIII. Yet the defenders of the rights of the prieſthood ſtart many difficulties on this ſubject, which it will be proper to anſwer. If God, ſay they, delegates to men the authority he has over his church, it is rather to his paſtors and miniſters of the goſpel, than to ſovereigns and magiſtrates. The power of the magiſtrate does not belong to the eſſence of the church. God, on the contrary, has eſtabliſhed paſtors over his church, and regulated the functions of their miniſtry; and in their office they are ſo far from being the vicegerents of ſovereigns, that they are not even obliged to pay them an unlimited obedience. Beſides, they exerciſe their functions on the ſovereign, as well as on private perſons; and the ſcripture, as well as church hiſtory, attribute a right of government to them.

Anſwer. When they ſay that the power of the magiſtrate does not belong to the eſſence of the church, they would explain themſelves more properly, if they ſaid that the church may ſubſiſt though there were no magiſtrates. This is true, but we cannot from hence conclude, that the magiſtrate has no authority over the church; for, by the ſame reaſon, we might prove that merchants, phyſicians, and every perſon elſe, do not depend on the ſovereign; becauſe it is not eſſential to merchants, phyſicians, and mankind in general, to be governed by magiſtrates. However, reaſon and ſcripture ſubject them to the *ſuperior powers.*

XIX. 2°. What they add is very true, that God has eſtabliſhed paſtors, and regulated their functions,

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and that in this quality they are not the vicegerents of human powers; but it is eaſy to convince them by examples, that they can draw no conſequence from thence to the prejudice of the ſupreme authority. The function of a phyſician is from God as the Author of nature; and that of a paſtor is derived alſo from the Deity as the Author of religion. This however does not hinder the phyſician from having a dependance on the ſovereign. The ſame may be ſaid of agriculture, commerce, and all the arts. Beſides, the judges hold their offices and places from the prince, yet they do not receive all the rules they are to follow from him. It is God himſelf who orders them to take no bribe, and to do nothing through hatred or favour, &c. Nothing more is requiſite to ſhew how unjuſt a conſequence it is to pretend, that, becauſe a thing is eſtabliſhed by God, it ſhould be independent of the ſovereign.

XX. 3°. But, ſay they, paſtors are not always obliged to obey the ſupreme magiſtrate. We agree, but we have obſerved that this can only take place in matters directly oppoſite to the law of God; and we have ſhewn that this right is inherent in every perſon in common affairs as well as in religion, and conſequently does not derogate from the authority of the ſovereign.

XXI. 4°. Neither can we deny that the paſtoral functions are exerciſed on kings, not only as members of the church, but alſo in particular as poſſeſſed of the regal power. But this proves nothing; for what function is there that does not regard the ſovereign?

In particular, does the phyſician leſs exerciſe his profeſſion on the prince, than on other people? Does he not equally preſcribe for him a regimen and the medicines neceſſary for his health? Does not the office of a counſellor regard alſo the ſovereign, and even in his quality of chief magiſtrate? and yet who ever thought of exempting thoſe perſons from a ſubjection to the ſupreme authority?

XXII. 5°. But laſtly, ſay they, is it not certain, that ſcripture and ancient hiſtory aſcribe the government of the church to paſtors? This is alſo true, but we need only examine into the nature of the government belonging to the miniſters of religion, to be convinced that it does not at all diminiſh the authority of the ſovereign.

XXIII. There is a government of *ſimple direction*, and a government of *authority*. The former conſiſts in giving counſel, or teaching the rules which ought to be followed. But it ſuppoſes no authority in him who governs, neither does it reſtrain the liberty of thoſe who are governed, except in as much as the laws inculcated on that occaſion imply an obligation of themſelves. Such is the government of phyſicians concerning health, of lawyers with regard to civil affairs, and of counſellors of ſtate with reſpect to politics. The opinions of thoſe perſons are not obligatory in regard to indifferent things; and in neceſſary affairs they are not binding of themſelves, but only ſo far as they inculcate the laws eſtabliſhed by nature, or by the ſovereign, and this is the ſpecies of government belonging to paſtors.

XXIV. But

XXIV. But there is alſo a government of *juriſdiction and authority*, which implies the right of eſtabliſhing regulations, and really obliges the ſubject. This government, ariſing from the ſovereign authority, obliges by the nature of the authority itſelf, which confers the power of compulſion. But it is to be remarked, that real authority is inſeparable from the right of compelling and obliging. Theſe are the criterion by which alone it may be diſtinguiſhed. It is this laſt ſpecies of government which we aſcribe to the ſovereign; and of which we affirm that it does not belong to paſtors *.

XXV. We therefore ſay, that the government, belonging to paſtors, is that of counſel, inſtruction and perſuaſion, whoſe entire force and authority conſiſts in the word of God, which they ought to teach the people; and by no means in a perſonal authority. Their power is to declare the orders of the Deity, and goes no farther.

XXVI. If at preſent we compare theſe different ſpecies of government, we ſhall eaſily perceive that they are not oppoſite to each other, even in matters of religion. The government of ſimple direction, which we give to paſtors, does not claſh with the ſovereign authority; on the contrary, it may find an advantage in its aid and aſſiſtance. Thus there is no contradiction in ſaying, that the ſo-

* See the goſpel according to St. Luke, chap. xii. ver. 14. firſt epiſtle to the Corinthians, chap. x. ver. 4. Epheſ. chap. vi. ver. 17. Philip. iii. ver. 20.

vereign governs the paſtors, and that is alſo governed by them, provided we attend to the different ſpecies of government. Theſe are the general principles of this important doctrine, and it is eaſy to apply them to particular caſes.

CHAP. IV.

Of the power of the ſovereign over the lives and fortunes of his ſubjects in criminal caſes.

I. THE principal end of civil government and ſociety, is to ſecure to mankind all their natural advantages, and eſpecially their lives. This end neceſſarily requires that the ſovereign ſhould have ſome right over the lives of his ſubjects, either in an *indirect manner*, for the defence of the ſtate, or in a *direct manner*, for the puniſhment of crimes.

II. The of power the prince over the lives of the ſubjects, with reſpect to the defence of the ſtate, regards the right of war, of which we ſhall treat hereafter. Here we intend to ſpeak only of the power of inflicting puniſhments.

III. The firſt queſtion which preſents itſelf, is to know the origin and foundation of this part of the ſovereign power; a queſtion, which cannot be anſwered without ſome difficulty. Puniſhment, it is ſaid, is an evil which a perſon ſuffers in a compulſive way: A man cannot puniſh himſelf; and conſequently

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it ſeems that individuals could not transfer to the ſovereign a right which they had not over themſelves.

IV. Some civilians pretend, that when a ſovereign inflicts puniſhments on his ſubjects, he does it by virtue of their own conſent; becauſe, by ſubmitting to his authority, they have promiſed to acquieſce in every thing he ſhould do with reſpect to them; and in particular a ſubject, who determines to commit a crime, conſents thereby to ſuffer the puniſhment eſtabliſhed againſt the delinquent.

V. But it ſeems difficult to determine the right of the ſovereign on a preſumption of this nature, eſpecially with reſpect to capital puniſhments; neither is it neceſſary to have recourſe to this pretended conſent of criminals, in order to eſtabliſh the vindicative power. It is better to ſay that the right of puniſhing malefactors, derives its origin from that which every individual originally had in the ſociety of nature, to repel the injuries committed againſt himſelf, or againſt the members of the ſociety, which right has been yielded and transferred to the ſovereign.

VI. In a word, the right of executing the laws of nature, and of puniſhing thoſe who violate them, belongs originally to ſociety in general, and to each individual in particular; otherwiſe the laws which nature and reaſon impoſe on man, would be entirely uſeleſs in a ſtate of nature, if no body had the power of putting them in execution, or of puniſhing the violation of them.

VII. Whoever violates the laws of nature, teſtifies thereby, that he tramples on the maxims of reaſon and equity, which God has preſcribed for the common ſafety; and thus he becomes an enemy of mankind. Since therefore every man has an inconteſtable right to take care of his own preſervation and that of ſociety, he may, without doubt, inflict on ſuch a perſon puniſhments capable of producing repentance in him, of hindering him from committing the like crimes for the future, and even of deterring others by his example. In a word, the ſame laws of nature which prohibit vice, do alſo confer a right of purſuing the perpetrator of it, and of puniſhing him in a juſt proportion.

VIII. It is true, in a ſtate of nature, theſe kinds of chaſtiſements are not inflicted by authority, and the criminal might happen to ſhelter himſelf from the puniſhments he has to dread from other men, or even repel their attacks. But the right of puniſhment is not for that either leſs real or leſs founded. The difficulty of putting it in execution does not deſtroy it: This was one of the inconveniencies of the primitive ſtate, which men have efficaciouſly remedied by the eſtabliſhment of ſovereignty.

IX. By following theſe principles, it is eaſy to comprehend that the right of a ſovereign, to puniſh crimes, is no other than that natural right which human ſociety and every individual had originally to execute the law of nature, and to take care of their own ſafety; this natural right has been yielded and transferred to the ſovereign, who, by means of

the authority with which he is invefted, exercifes it in fuch a manner, as it is difficult for wicked men to evade it. Befides, whether we call this natural right of punifhing crimes the vindicative power, or whether we refer it to a kind of *right of war*, is a matter of indifference, neither does it change its nature on that account.

X. This is the true foundation of the right of the fovereign with refpect to punifhments. This being granted, I define punifhment an evil, with which the prince threatens thofe who are difpofed to violate his laws, and which he really inflicts, in a juft proportion, whenever they violate them, independently of the reparation of the damage, with a view to fome future good, and finally for the fafety and peace of fociety.

XI. I fay, 1°. that punifhment is an evil, and this evil may be of a different nature, according as it affects the life of a perfon, his body, his reputation, or his eftate. Befides, it is indifferent whether this evil confifts in hard and toilfome labour, or in fuffering fomething painful.

XII. I add, in the fecond place, that it is the fovereign who awards punifhments; not that every punifhment in general fuppofes fovereignty, but becaufe we are here fpeaking of the right of punifhing in fociety, and as a branch of the fupreme power. It is therefore the fovereign alone that is empowered to award punifhments in fociety; but individuals cannot do themfelves juftice, without encroaching on the rights of the prince.

XIII. I fay,

XIII. I ſay, 3°. *with which the ſovereign threatens, &c.* to denote the chief intention of the prince. He threatens firſt, and then puniſhes, if menaces be not ſufficient to prevent the crime. Hence it alſo appears that puniſhment ever ſuppoſes guilt, and conſequently we ought not to reckon among puniſhments, properly ſo called, the different evils to which men are expoſed, without having antecedently committed a crime.

XIV. I add, 4°. that puniſhment is inflicted *independently of the reparation of the damage*, to ſhew that theſe are two things very diſtinct, and ought not to be confounded. Every crime is attended with two obligations; the firſt is, to repair the injury committed; and the ſecond, to ſuffer the puniſhment; therefore the delinquent ought to ſatisfy both. It is alſo to be obſerved on this occaſion, that the right of puniſhment in civil ſociety is tranſferred to the magiſtrate, who may by his own authority pardon a criminal; but this is not the caſe with reſpect to the right of ſatisfaction or reparation of damages. The magiſtrate cannot acquit the offender in this article, and the injured perſon always retains his right; ſo that he is wronged, if he be hindered from obtaining due ſatisfaction.

XV. Laſtly, 5°. by ſaying, *that puniſhment is inflicted with a view to ſome good*; we point out the end which the prince ought to propoſe to himſelf in inflicting puniſhments, and this we ſhall more particularly explain.

XVI. The

XVI. The ſovereign, as ſuch, has not only a right, but is alſo obliged to puniſh crimes. The uſe of puniſhment is ſo far from being contrary to equity, that it is abſolutely requiſite for the public tranquillity. The ſupreme power would be uſeleſs, were it not inveſted with a right, and armed with a force, ſufficient to deter the wicked by the apprehenſion of ſome evil, and to make them ſuffer that evil, when they injure ſociety. It was even neceſſary that this power ſhould extend ſo far, as to make them ſuffer the greateſt of natural evils, which is *death*; in order effectually to repreſs the moſt daring audacіouſneſs, and, as it were, to balance the different degrees of human wickedneſs by a ſufficient counterpoiſe.

XVII. Such is the right of the ſovereign. But if he has a right to puniſh, the criminal muſt be alſo under ſome obligation in this reſpect; for we cannot poſſibly conceive a right without an obligation correſponding to it. But wherein does this obligation of the criminal conſiſt? Is he obliged to betray himſelf, and voluntarily expoſe himſelf to puniſhment? I anſwer, that this is not neceſſary for the end propoſed in the eſtabliſhment of puniſhments; nor can we reaſonably require that a man ſhould thus betray himſelf; but this does not hinder him from being under a real obligation.

XVIII. 1°. It is certain, that when there is a ſimple pecuniary puniſhment, to which a man has been lawfully condemned, he ought to pay it

it without being forced by the magiſtrate; not only prudence requires it, but alſo the rules of juſtice, according to which we are bound to repair any injury we have committed, and to obey lawful judges.

XIX. 2°. What relates to corporal, and eſpecially to capital, puniſhments, is attended with greater difficulty. Such is our natural fondneſs for life, and averſion to infamy, that a criminal cannot be under an obligation of accuſing himſelf voluntarily, and preſenting himſelf to puniſhment; and indeed neither the public good, nor the rights of the perſon intruſted with the ſupreme authority, demand it.

XX. 3°. In conſequence of this ſame principle, a criminal may innocently ſeek his ſafety in flight, and is not obliged to remain in priſon if he perceives the doors open, or if he can eaſily force them. But it is not lawful for him to procure his liberty by the commiſſion of a new crime, as by cutting the throats of the jailors, or by killing thoſe ſent to apprehend him.

XXI. 4°. But, in fine, if we ſuppoſe that the criminal is known, that he is taken, that he cannot make his eſcape from priſon, and that, after a mature examination or trial, he is convicted of the crime, and conſequently condemned to condign puniſhment; he is in this caſe certainly obliged to undergo the puniſhment, and to acknowledge the lawfulneſs of his ſentence; ſo that there is no injury

done him, nor can he reaſonably complain of any one but himſelf: Much leſs can he withdraw from puniſhment by violence, and oppoſe the magiſtrate in the exerciſe of his right. In this properly conſiſts the obligation of the criminal with reſpect to puniſhment. Let us now enquire more particularly into the end the ſovereign ought to propoſe to himſelf in inflicting them.

XXII. In general, it is certain that the prince never ought to inflict puniſhments but with a view to ſome public advantage. To make a man ſuffer merely becauſe he has done a thing, and to attend only to what has paſſed, is a piece of cruelty condemned by reaſon; for, after all, it is impoſſible that the fact ſhould be undone. In ſhort, the right of puniſhing is a part of ſovereignty: now ſovereignty is founded ultimately on a beneficent power: it follows therefore, that even when the chief ruler makes uſe of his power of the ſword, he ought to aim at ſome advantage, or future good, agreeably to what is required of him by the very nature and foundation of his authority.

XXIII. The principal end of puniſhment is therefore the welfare of ſociety; but as there may be different means of arriving at this end, according to different circumſtances, the ſovereign alſo, in inflicting puniſhments, propoſes different and particular views, ever ſubordinate, and all finally reducible to the principal end above-mentioned. What we have ſaid, agrees with the obſervation

ſervation of Grotius *. "In puniſhments, we "muſt either have the good of the criminal in "view, or the advantage of him whoſe intereſt it "was that the crime ſhould not have been commit- "ted, or the good of all indifferently."

XXIV. Hence the ſovereign ſometimes propoſes to correct the criminal, and make him loſe the vicious habit, ſo as to cure the evil by its contrary, and to take away the ſweets of the crime by the bitterneſs of the puniſhment. This puniſhment, if the criminal is reformed by it, tends to the public good. But if he ſhould perſevere in his wickedneſs, the ſovereign muſt have recourſe to more violent remedies, and even to death.

XXV. Sometimes the chief ruler propoſes to deprive criminals of the means of committing new crimes; as for example, by taking from them the arms which they might uſe, by ſhutting them up in priſon, by baniſhing them, or even by putting them to death. At the ſame time he takes care of the public ſafety, not only with reſpect to the criminals themſelves, but alſo with regard to thoſe inclined to commit the like crime, in deterring them by thoſe examples. For this reaſon, nothing is more agreeable to the end of puniſhment, than to inflict it with ſuch a ſolemnity as is moſt proper to make an impreſſion on the minds of the vulgar.

XXVI. All theſe particular ends of puniſhment

* Lib. ii. cap. xx. § 6. N. 2.

ought

ought to be conftantly fubordinate, and referred to the principal end, namely, the fafety of the public, and the fovereign ought to ufe them all as means of obtaining that end; fo that he fhould not have recourfe to the moft rigorous punifhments, till thofe of greater lenity are infufficient to procure the public tranquillity.

XXVII. But here a queftion arifes, whether all actions, contrary to the laws, can be lawfully punifhed? I anfwer, that the very end of punifhment, and the conftitution of human nature, evince there may be actions, in themfelves evil, which however it is not neceffary for human juftice to punifh.

XXVIII. And, 1°. acts purely internal, or fimple thoughts which do not difcover themfelves by any external acts prejudicial to fociety; for example, the agreeable idea of a bad action, the defire of committing it, the defign of it without proceeding to the execution, &c. all thefe are not fubject to the feverity of human punifhment, even though it fhould happen that they are afterwards difcovered.

XXIX. On this fubject we muft however make the following remarks. The firft is, that if this kind of crimes be not fubject to human punifhment, it is becaufe the weaknefs of man does not permit, even for the good of fociety, that he fhould be treated with the utmoft rigour. We ought to have a juft regard for humanity in things, which, though bad in themfelves, do not greatly affect the public order and tranquillity. The fecond remark is,

is, that though acts, purely internal, are not subject to civil punishment, we must not for this reason conclude, that these acts are not under the direction of the civil laws. We have before established the contrary *. In a word, it is evident that the laws of nature expressly condemn such actions, and that they are punished by the Deity.

XXX. 2°. It would be too severe to punish every peccadillo; since human frailty, notwithstanding the greatest caution and attention, cannot avoid a multitude of slips and infirmities. This is a consequence of the toleration due to humanity.

XXXI. 3°. In a word, we must necessarily leave unpunished, those common vices which are the consequences of a general corruption; as for instance, ambition, avarice, inhumanity, ingratitude, hypocrisy, envy, pride, wrath, &c. for if a sovereign wanted to punish such dispositions with rigour, he would be reduced to the necessity of reigning in a desert. It is sufficient to punish those vices when they prompt men to enormous and overt acts.

XXXII. It is not even always necessary to punish crimes in themselves punishable, for there are cases in which the sovereign may pardon; and of this we must judge by the very end of punishment.

* Chap. i. § 22, &c.

XXXIII. The public good is the ultimate end of all puniſhment. If therefore there are circumſtances, in which, by pardoning, as much or more advantage is procured than by puniſhing, then there is no obligation to puniſh, and the ſovereign even ought to ſhew clemency. Thus if the crime be concealed, or be only known to a few, it is not always neceſſary, nay it would ſometimes be dangerous, to make it public by puniſhment; for many abſtain from evil, rather from their ignorance of vice, than from a knowledge and love of virtue. Cicero obſerves, with regard to Solon's having no law againſt parricide, that this ſilence of the legiſlator has been looked upon as a great mark of prudence; foraſmuch as he made no prohibition of a thing of which there had been yet no example, leſt, by ſpeaking of it, he ſhould ſeem to give the people a notion of committing it, rather than deter them from it.

We may alſo conſider the perſonal ſervices which the criminal, or ſome of his family, have done to the ſtate, and whether he can ſtill be of great advantage to it, ſo that the impreſſion made by the ſight of his puniſhment be not likely to produce ſo much good as he himſelf is capable of doing. Thus at ſea, when the pilot has committed a crime, and there is none on board capable of navigating the ſhip, it would be deſtroying all thoſe in the veſſel to puniſh him. This example may alſo be applied to the general of an army.

In a word, the public advantage, which is the true meaſure of puniſhment, ſometimes requires that the ſovereign ſhould pardon, becauſe of the great number of criminals. The prudence of government demands

that the juftice, eftablifhed for the prefervation of fociety, fhould not be exercifed in fuch a manner as to fubvert the ftate.

XXXIV. All crimes are not equal, and it is but equity there fhould be a due proportion between the crime and the punifhment. We may judge of the greatnefs of a crime in general by its object, by the intention and malice of the criminal, and by the prejudice arifing to fociety from it; and to this latter confequence, the two others muft be ultimately referred.

XXXV. According to the dignity of the object, the action is more or lefs criminal. We muft place, in the firft clafs, thofe crimes which intereft fociety in general; the next are thofe which difturb the order of civil fociety; and laft of all thofe which relate to individuals: the latter are more or lefs heinous, according to the value of the thing of which they deprive us. Thus he, who flays his father, commits a more horrid murder than if he had killed a ftranger. He who infults a magiftrate, is more to blame than if he had infulted his equal. A perfon who adds murder to robbery, is more guilty than he who only ftrips the traveller of his money.

XXXVI. The greater or leffer degree of malice alfo contributes very much to the enormity of the crime, and is to be deduced from feveral circumftances.

1°. From the motives which engage mankind to commit a crime, and which may be more or lefs eafy to refift. Thus he, who robs or murders in cold blood,

blood, is more culpable than he who yields to the violence of ſome furious paſſion.

2°. From the particular character of the criminal, which, beſides the general reaſons, ought to retain him in his duty: "The higher a man's birth is, "ſays Juvenal, or the more exalted he is in dignity, "the more enormous is the crime he commits *. "This takes place eſpecially with reſpect to princes, "and ſo much the more, becauſe the conſequences "of their bad actions are fatal to the ſtate, from "the number of perſons who endeavour to imitate "them." This is the judicious remark made by Cicero †. The ſame obſervation may alſo be applied to magiſtrates and clergymen.

3°. We muſt alſo conſider the circumſtances of time and place, in which the crime has been committed, the manner of committing it, the inſtruments uſed for that purpoſe, &c.

4°. Laſtly, we are to conſider whether the criminal has made a cuſtom of committing ſuch a crime, or, if he is but rarely guilty of it; whether he has

* *Omne animi vitium tanto conſpectius in ſe*
Crimen habet, quanto major qui peccat habetur.

——More public ſcandal vice attends,
As he is great and noble, who offends.

Juv. Sat. viii. ver. 140, 141.

† De Leg. lib. iii. cap. 14. *Nec enim tantum mali eſt peccare principes quanquam eſt magnum hoc per ſeipſum malum; quantum illud, quod permulti imitatores principum exiſtunt: quo pernicioſius de republica merentur vitioſi principes, quod non ſolum vitia concipiunt ipſi, ſed ea infundunt in civitatem. Neque ſolum obſunt, quod ipſi corrumpuntur, ſed etiam quod corrumpunt; pluſque exemplo, quam peccato, nocent.*

committed it of his own accord, or been ſeduced by others, &c.

XXXVII. We may eaſily perceive that the difference of theſe circumſtances intereſts the happineſs and tranquillity of ſociety, and conſequently either augments or diminiſhes the enormity of the crime.

XXXVIII. There are therefore crimes leſſer or greater than others; and conſequently they do not all deſerve to be puniſhed with equal ſeverity; but the kind and preciſe degree of puniſhment depends on the prudence of the ſovereign. The following are the principal rules by which he ought to be directed.

1°. The degree of puniſhment ought ever to be proportioned to the end of inflicting it, that is, to repreſs the inſolence and malignity of the wicked, and to procure the internal peace and ſafety of the ſtate. It is upon this principle that we muſt augment or diminiſh the rigour of puniſhment. The puniſhment is too rigorous, if we can, by milder means, obtain the end propoſed; and, on the contrary, it is too moderate when it has not a force ſufficient to produce theſe effects, and when the criminals themſelves deſpiſe it.

2°. According to this principle, every crime may be puniſhed as the public good requires, without conſidering whether there be an equal or leſſer puniſhment for another crime, which in itſelf appears more or leſs heinous: thus robbery, for inſtance, is of its own nature a leſs crime than murder; and yet highwaymen may, without injuſtice, be puniſhed with death, as well as murderers.

3°. The

3°. The equality which the ſovereign ought ever to obſerve in the exerciſe of juſtice, conſiſts in puniſhing thoſe alike who have treſpaſſed alike; and in not pardoning a perſon, without very good reaſon, who has committed a crime for which others have been puniſhed.

4°. It muſt be alſo obſerved, that we cannot multiply the kinds and degrees of puniſhment *in infinitum*; and as there is no greater puniſhment than death, it is neceſſary that certain crimes, though unequal in themſelves, ſhould be equally ſubject to capital puniſhment. All that can be ſaid, is, that death may be more or leſs terrible, according as we employ a milder or ſhorter method to deprive a perſon of life.

5°. We ought, as much as poſſible, to incline to the merciful ſide, when there are not ſtrong reaſons for the contrary. This is the ſecond part of clemency. The firſt conſiſts in a total exemption from puniſhment, when the good of the ſtate permits it. This is alſo one of the rules of the Roman law *.

6°. On the contrary, it is ſometimes neceſſary and convenient to heighten the puniſhment, and to ſet ſuch an example as may intimidate the wicked, when the evil can be prevented only by violent remedies †.

* In pœnalibus cauſis, benignus interpretandum eſt. Lib. cv. § 2. ff. de Reg. Jur. Vid. ſup, § 33.

† Nonnunquam evenit, ut aliquorum maleficiorum ſupplicia exacerbantur, quoties nimirum, multis perſonis graſſantibus, exemplo opus ſit. Lib. xvi. § 10. ff. de pœnis.

7°. The fame punifhment does not make the fame impreffion on all kinds of people, and confequently has not the fame force to deter them from vice. We ought therefore to confider, both in the general penal fanction and in the application of it, the perfon of the criminal, and, in that, all thofe qualities of age, fex, ftate, riches, ftrength, and the like, which may either increafe or diminifh the fenfe of punifhment. A particular fine, for inftance, will diftrefs a beggar, while it is nothing to a rich man: The fame mark of ignominy will be very mortifying to a perfon of honour and quality, which would pafs for a trifle with a vulgar fellow. Men have more ftrength to fupport punifhments than women, and full-grown people more than thofe of tender years, &c. Let us alfo obferve, that it belongs to the juftice and prudence of government, always to follow the order of judgment and of the judiciary procedure in the infliction of punifhments. This is neceffary, not only that we may not commit injuftice in an affair of fuch importance, but alfo that the fovereign may be fecured againft all fufpicion of injuftice and partiality. However, there are fometimes extraordinary and preffing circumftances, where the good of the ftate and the public fafety do not permit us exactly to obferve all the formalities of the criminal procedure; and provided, in thofe circumftances, the crime be duly proved, the fovereign may judge fummarily, and without delay punifh a criminal, whofe punifhment cannot be deferred without imminent danger to the ftate. Laftly, it is alfo a rule of prudence, that if we cannot chaftife a criminal without expofing the ftate to great danger, the fovereign ought not

only

only to grant a pardon, but alſo to do it in ſuch a manner as that it may appear rather to be the effect of *clemency* than of *neceſſity*.

XXXIX. What we have ſaid relates to puniſhments inflicted for crimes of which a perſon is the ſole and proper author. With reſpect to crimes committed by ſeveral, the following obſervations may ſerve as principles.

1°. It is certain that thoſe, who are really accomplices in the crime, ought to be puniſhed in proportion to the ſhare they have in it, and according as they ought to be conſidered as principal cauſes, or ſubordinate and collateral inſtruments. In theſe caſes, ſuch perſons ſuffer rather for their own crime than for that of another.

2°. As for crimes committed by a body or community, thoſe only are really culpable who have given their actual conſent to them; but they, who have been of a contrary opinion, are abſolutely innocent. Thus Alexander, having given orders to ſell all the Thebans after the taking of their city, excepted thoſe, who, in the public deliberations, had oppoſed the breaking of the alliance with the Macedonians.

3°. Hence it is, that, with reſpect to crimes committed by a multitude, reaſons of ſtate and humanity direct, that we ſhould principally puniſh thoſe who are the ring-leaders, and pardon the reſt. The ſeverity of the ſovereign to ſome will repreſs the audaciouſneſs of the moſt reſolute; and his clemency to others will gain him the hearts of the multitude *.

* Quintil. Declam. cap. vii. p. m. 237.

4°. If the ring-leaders have ſheltered themſelves by flight, or otherwiſe, or if they have all an equal ſhare in the crime, we muſt have recourſe to a decimation, or other means, to puniſh ſome of them. By this method the terror reaches all, while but few fall under the puniſhment.

XL. Beſides, it is a certain and inviolable rule, that no perſon can be lawfully puniſhed for the crime of another, in which he has had no ſhare. All merit and demerit is intirely perſonal and incommunicable; and we have no right to puniſh any but thoſe who deſerve it.

XLI. It ſometimes happens, however, that innocent perſons ſuffer on account of the crimes of others; but we muſt make two remarks on this ſubject.

1°. Not every thing that occaſions uneaſineſs, pain, or loſs to a perſon, is properly a puniſhment; for example, when ſubjects ſuffer ſome grievances from the miſcarriages and crimes of their prince, it is not, in reſpect to them, a puniſhment, but a misfortune.

The ſecond remark is, that theſe kinds of evils, or indirect puniſhments, if we may call them ſo, are inſeparable from the conſtitution of human affairs.

XLII. Thus if we confiſcate the effects of a perſon, his children ſuffer indeed for it; but it is not properly a puniſhment to them, ſince thoſe effects ought to belong to them only on ſuppoſition their father had kept them till his death. In a word, we muſt either almoſt entirely aboliſh the uſe of puniſhments, or acknow-

acknowledge, that theſe inconveniencies, inſeparable from the conſtitution of human affairs, and from the particular relations which men have to each other, have nothing in themſelves unjuſt.

XLIII. Laſtly, it is to be obſerved, that there are crimes ſo enormous, ſo eſſentially affecting in regard to ſociety, that the public good authorizes the ſovereign to take the ſtrongeſt precautions againſt them, and even, if neceſſary, to make part of the puniſhment fall on the perſons moſt dear to the criminal. Thus the children of traitors, or ſtate criminals, may be excluded from honours and preferments. The father is ſeverely puniſhed by this method, ſince he ſees he is the cauſe why the perſons deareſt to him are reduced to live in obſcurity. But this is not properly a puniſhment in regard to the children; for the ſovereign, having a right to give public employments to whom he pleaſes, may, when the public good requires it, exclude even perſons who have done nothing to render themſelves unworthy of theſe preferments. I confeſs that this is a hardſhip, but neceſſity authorizes it, to the end that the tenderneſs of a parent for his offspring may render him more cautious to undertake nothing againſt the ſtate. But equity ought always to direct thoſe judgments, and to mitigate them according to circumſtances.

XLIV. I am not of opinion that we can exceed theſe bounds, neither does the public good require it. It is therefore a real piece of injuſtice, eſtabliſhed among ſeveral nations, namely, to baniſh or kill the children

children of a tyrant or traitor, and ſometimes all his relations, though they were no accomplices in his crimes. This is ſufficient to give us a right idea of the famous law of Arcadius * the Chriſtian emperor.

* Cod. and L. Jul. Maj. lib. ix. tit. 8. leg. 5.

CHAP. V.

Of the power of ſovereigns over the Bona Reipublicæ, *or the goods contained in the commonwealth.*

I. THE right of the ſovereign over the goods contained in the commonwealth, relates either to the goods of the ſubject, or to thoſe which belong to the commonwealth itſelf as ſuch.

II. The right of the prince over the goods of the ſubject may be eſtabliſhed two different ways; for either it may be founded on the very nature of the ſovereignty, or on the particular manner in which it was acquired.

III. If we ſuppoſe, that a chief ruler poſſeſſes, with a full right of property, all the goods contained in the commonwealth, and that he has collected, as it were, his own ſubjects, who originally hold their eſtates of him, then it is certain that the ſovereign has as abſolute a power over thoſe eſtates, as every maſter of a family has over his own patrimony; and that the ſubjects cannot enjoy or diſpoſe of thoſe goods

goods or eſtates, but ſo far as the ſovereign permits. In theſe circumſtances, while the ſovereign has remitted nothing of his right by irrevocable grants, his ſubjects poſſeſs their eſtates in a *precarious* manner, revocable at pleaſure, whenever the prince thinks fit; they can only ſupply themſelves with ſuſtenance and other neceſſaries from them: In this caſe the ſovereignty is accompanied with a right of abſolute property.

IV. But, 1°. this manner of eſtabliſhing the power of the ſovereign over the goods of the ſubjects cannot be of great uſe; and if it has ſometimes taken place, it has only been among the oriental nations, who eaſily ſubmit to a deſpotic government.

2°. Experience teaches us, that this abſolute dominion of the ſovereign over the goods of the ſubject does not tend to the advantage of the ſtate. A modern traveller obſerves, that the countries, where this propriety of the prince prevails, however beautiful and fertile of themſelves, become daily more deſolate, poor, and barbarous; or that at leaſt they are not ſo flouriſhing as moſt of the kingdoms of Europe, where the ſubjects poſſeſs their eſtates as their own property, excluſive of the prince.

3°. The ſupreme power does not of itſelf require, that the prince ſhould have this abſolute dominion over the eſtates of his ſubjects. The property of individuals is prior to the formation of ſtates, and there is no reaſon which can induce us to ſuppoſe that thoſe individuals entirely transferred to the ſovereign the right they had over their own eſtates; on

on the contrary, it is to ſecure a quiet and eaſy poſſeſſion of their properties, that they have inſtituted government and ſovereignty.

4°. Beſides, if we ſhould ſuppoſe an abſolute ſovereignty acquired by arms, yet this does not of itſelf give an arbitrary dominion over the property of the ſubject. The ſame is true even of a patrimonial ſovereignty, which confers a right of alienating the crown; for this right of the ſovereign does not hinder the ſubject from enjoying his reſpective properties.

V. Let us therefore conclude, that, in general, the right of the prince over the goods of the ſubjects is not an abſolute dominion over their properties, but a right founded on the nature and end of ſovereignty, which inveſts him with the power of diſpoſing of thoſe eſtates in different manners, for the benefit of individuals as well as of the ſtate, without depriving the ſubjects of their right to their properties, except in caſes where it is abſolutely neceſſary for the public good.

VI. This being premiſed, the prince, as ſovereign, has a right over the eſtates of his ſubjects principally in three different manners.

The firſt conſiſts in regulating, by wiſe laws, the uſe which every one ought to make of his goods and eſtate, for the advantage of the ſtate and that of individuals.

The ſecond, in raiſing ſubſidies and taxes.

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The third, in uſing the rights of ſovereign or *tranſcendental* propriety *.

VII. To the firſt head we muſt reduce all *ſumptuary laws*, by which bounds are ſet to unneceſſary expences, which ruin families, and conſequently impoveriſh the ſtate. Nothing is more conducive to the happineſs of a nation, or more worthy of the care of the ſovereign, than to oblige the ſubjects to œconomy, frugality, and labour.

When luxury has once prevailed in a nation, the evil becomes almoſt incurable. As too great authority ſpoils kings, ſo luxury poiſons a whole people. The moſt ſuperfluous things are looked upon as neceſſary, and new neceſſities are daily invented. Thus families are ruined, and individuals diſabled from contributing to the expences neceſſary for the public good. An individual, for inſtance, who ſpends only three fifths of his income, and pays one fifth for the public ſervice, will not hurt himſelf, ſince he lays up a fifth to increaſe his ſtock. But if he ſpends all his income, he either cannot pay the taxes, or he muſt break in upon his capital.

Another inconveniency is, that not only the eſtates of individuals are ſquandered away by luxury, but, what is ſtill worſe, they are generally carried abroad into foreign countries, in purſuit of thoſe things which flatter luxury and vanity.

The impoveriſhing of individuals produces alſo another evil for the ſtate, by hindering marriages. On the contrary, people are more inclined to mar-

* Dominium eminens.

riage,

riage, when a moderate expence is ſufficient for the ſupport of a family.

This the emperor Auguſtus was very ſenſible of; for when he wanted to reform the manners of the Romans, among the various edicts which he either made or renewed, he re-eſtabliſhed both the ſumptuary law, and that which obliged people to marry.

When luxury is once introduced, it ſoon becomes a general evil, and the contagion inſenſibly ſpreads from the firſt men of the ſtate to the very dregs of the people. The king's relations want to imitate his magnificence; the nobility that of his relations; the gentry, or middle ſort of people, endeavour to equal the nobility; and the poor would fain paſs for gentry: Thus every one living beyond his income, the people are ruined, and all orders and diſtinctions confounded.

Hiſtory informs us, that, in all ages, luxury has been one of the cauſes which has more or leſs contributed to the ruin and decay even of the moſt powerful ſtates, becauſe it ſenſibly enervates courage, and deſtroys virtue. Suetonius obſerves, that Julius Cæſar invaded the liberties of his country only in conſequence of not knowing how to pay the debts he had contracted by his exceſſive prodigality, nor how to ſupport his expenſive way of living. Many ſided with him, becauſe they had not wherewith to ſupply that luxury to which they had been accuſtomed, and they were in hopes of getting by the civil wars enough to maintain their former extravagance *.

We muſt obſerve, in fine, that, to render the ſumptuary laws more effectual, princes and magiſtrates

* See Sall. ad Cæſar. de Repub. ordinand.

ought,

ought, by the example of their own moderation, to put thofe out of countenance who love extravagance, and to encourage the prudent, who would eafily fubmit to follow the pattern of a good œconomy and honeft frugality.

VIII. To this right of the fovereign of directing the fubjects in the ufe of their eftates and goods, we muft alfo reduce the laws againft gaming and prodigality, thofe which fet bounds to grants, legacies, and teftaments; and, in fine, thofe againft idle and lazy people, and againft perfons that fuffer their eftates to run to ruin, purely by carelefsnefs and neglect.

IX. Above all, it is of great importance to ufe every endeavour to banifh idlenefs, that fruitful fource of diforders. The want of a ufeful and honeft occupation is the foundation of an infinite number of mifchiefs. The human mind cannot remain in a ftate of inaction, and if it be not employed on fomething good, it will inevitably apply itfelf to fomething bad, as the experience of all ages demonftrates. It were therefore to be wifhed, that there were laws againft idlenefs, to prevent its pernicious effects, and that no perfon was permitted to live without fome honeft occupation either of the mind or body. Efpecially young people, who afpire after political, ecclefiaftical, or military employments, ought not to be permitted to pafs in fhameful idlenefs, the time of their life moft proper for the ftudy of morality, politics, and religion. It is obvious that a wife

prince may, from theſe reflections, draw very important inſtructions for government.

X. The ſecond manner, in which the prince can diſpoſe of the goods or eſtates of his ſubjects, is, by demanding taxes or ſubſidies of them. That the ſovereign has this right, will evidently appear, if we conſider that taxes are no more than a contribution which individuals pay to the ſtate for the preſervation and defence of their lives and properties, a contribution abſolutely neceſſary both for the ordinary and extraordinary expences of government, which the ſovereign neither can nor ought to furniſh out of his own fund: He muſt therefore, for that end and purpoſe, have a right to take away part of the goods of the ſubject by way of tax.

XI. Tacitus relates a memorable ſtory on this ſubject. "Nero, he ſays, once thought to aboliſh "all taxes, and to make this magnificent grant to "the Roman people; but the ſenate moderated his "ardour; and, after having commended the emperor for his generous deſign, they told him that "the empire would inevitably fall, if its foundations "were ſapped; that moſt of the taxes had been "eſtabliſhed by the conſuls and tribunes during the "very height of liberty in the times of the republic, "and that they were the only means of ſupplying "the immenſe expences neceſſary for the ſupport "of ſo great an empire."

XII. Nothing is then generally more unjuſt and unreaſonable than the complaints of the populace, who

who frequently afcribe their mifery to taxes, without reflecting that thefe are, on the contrary, the foundation of the tranquillity and fafety of the ftate, and that they cannot refufe to pay them without prejudicing their own interefts.

XIII. However, the end and prudence of civil government require not only that the people fhould not be overcharged in this refpect, but alfo that the taxes fhould be raifed in as gentle and imperceptible a manner as poffible.

XIV. And, 1°. the fubjects muft be equally charged, that they may have no juft reafon of complaint. A burden equally fupported by all, is lighter to every individual; but if a confiderable number releafe or excufe themfelves, it becomes much more heavy and infupportable to the reft. As every fubject equally enjoys the protection of the government, and the fafety which it procures; it is juft that they fhould all contribute to its fupport in a proper equality.

XV. 2°. It is to be obferved however, that this equality does not confift in paying equal fums of money, but in equally bearing the burden impofed for the good of the ftate; that is, there muft be a juft proportion between the burden of the tax and the benefit of peace; for though all equally enjoy peace, yet the advantages, which all reap from it, are not equal.

XVI. 3°. Every man ought therefore to be taxed in proportion to his income, both in ordinary and extraordinary exigencies.

XVII. 4°. Experience ſhews, that the beſt method of raiſing taxes, is to lay them on things daily conſumed in life.

XVIII. 5°. As to merchandizes imported, it is to be obſerved, that if they are not neceſſary, but only ſubſervient to luxury, very great duties may juſtly be laid on them.

XIX. 6°. When foreign merchandizes conſiſt of ſuch things as may grow, or be manufactured at home, by the induſtry and application of our own people, the impoſts ought to be raiſed higher upon thoſe articles.

XX. 7°. With regard to the exportation of commodities of our own growth, if it be the intereſt of the ſtate that they ſhould not go out of the country, it may be right to raiſe the cuſtoms upon them; but on the contrary, if it is for the public advantage that they ſhould be ſent to foreign markets, then the duty of exportation ought to be diminiſhed, or abſolutely taken away. In ſome countries, by a wiſe piece of policy, rewards are given to the ſubjects, who export ſuch commodities as are in too great plenty, and far ſurpaſſing the wants of the inhabitants.

XXI. 8°. In a word, in the application of all theſe maxims, the ſovereign muſt attend to the good

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of trade, and take all proper meaſures to make it flouriſh.

XXII. It is unneceſſary to obſerve, that the right of the ſovereign, with reſpect to taxes, being founded on the wants of the ſtate, he ought never to raiſe them but in proportion to thoſe wants; neither ſhould he employ them but with that view, nor apply them to his own private uſes.

XXIII. He ought alſo to attend to the conduct of the officers who collect them, ſo as to hinder their importunity and oppreſſion. Thus Tacitus commends a very wiſe edict of the emperor Nero, "who ordered that the magiſtrates of Rome and "of the provinces ſhould receive complaints againſt "the publicans at all times, and regulate them up-"on the ſpot."

XXIV. The *ſovereign* or *tranſcendental* property*, which, as we have ſaid, conſtitutes the third part of the ſovereign's power over the eſtates of his ſubjects, conſiſts in the right of making uſe of every thing the ſubject poſſeſſes, in order to anſwer the neceſſities of the ſtate.

XXV. Thus, for example, if a town is to be fortified, he may take the gardens, lands, or houſes of private ſubjects, ſituated in the place where the ramparts or ditches are to be raiſed. In ſieges, he may beat down houſes and trees belonging to private perſons, to the end that the enemy may not be ſheltered by them, or the garriſon incommoded.

* Dominium eminens.

 XXVI. There

XXVI. There are great diſputes, among politicians, concerning this *tranſcendental property*. Some abſolutely will not admit of it; but the diſpute turns more upon the word than the thing. It is certain that the very nature of ſovereignty authorizes a prince, in caſe of neceſſity, to make uſe of the goods and fortunes of his ſubjects; ſince in conferring the ſupreme authority upon him, they have at the ſame time given him the power of doing and exacting every thing neceſſary for the preſervation and advantage of the ſtate. Whether this be called *tranſcendental property*, or by ſome other name, is altogether indifferent, provided we are agreed about the right itſelf.

XXVII. To ſay ſomething more particular concerning this *tranſcendental property*, we muſt obſerve it to be a maxim of natural equity, that when contributions are to be raiſed for the exigencies of the ſtate, and for the preſervation of ſome particular object, by perſons who enjoy it in common, every man ought to pay his quota, and ſhould not be forced to bear more of the burden than another.

XXVIII. But ſince it may happen that the preſſing wants of the ſtate, and particular circumſtances, will not permit this rule to be literally followed, there is a neceſſity that the ſovereign ſhould have a right to deviate from it, and to ſeize on the property of a private ſubject, the uſe of which, in the preſent circumſtances, is become neceſſary to the public. Hence this right takes place only

in the caſe of a neceſſity of ſtate, which ought not to have too great an extent, but ſhould be tempered as much as poſſible with the rules of equity.

XXIX. It is therefore juſt in that caſe, that the proprietors ſhould be indemnified, as near as poſſible, either by their fellow-ſubjects, or by the exchequer. But if the ſubjects have voluntarily expoſed themſelves, by building houſes in a place where they are to be pulled down in time of war, then the ſtate is not in rigour obliged to indemnify them, and they may be reaſonably thought to have conſented to this loſs. This is ſufficient for what relates to the right of the ſovereign over the eſtates of the ſubjects.

XXX. But, beſides theſe rights, the prince has alſo originally a power of diſpoſing of certain places called *public goods*, becauſe they belong to the ſtate as ſuch: but as theſe public goods are not all of the ſame kind, the right of the ſovereign in this reſpect alſo varies.

XXXI. There are goods intended for the ſupport of the king and the royal family, and others to defray the expences of the government. The former are called the crown lands, or the patrimony of the prince; and the latter the public treaſure, or the revenue of the ſtate.

XXXII. With regard to the former, the ſovereign has the full and entire profits, and may diſpoſe of

the revenues arifing from them as he abfolutely pleafes. So that what he lays up out of his income makes an acceffion to his own private patrimony, unlefs the laws of the land have determined otherwife. With regard to the other public goods, he has only the fimple adminiftration of them, in which he ought to propofe only the advantage of the ftate, and to exprefs as much care and fidelity as a guardian with refpect to the eftate of his pupil.

XXXIII. By thefe principles we may judge to whom the acquifitions belong, which a prince has made during his reign; for if thefe acquifitions arife from the goods intended to defray the public expences, they ought certainly to accrue to the public, and not to the prince's private patrimony. But if a king has undertaken and fupported a war at his own expence, and without engaging or charging the ftate in the leaft, he may lawfully appropriate the acquifitions he has made in fuch an expedition.

XXXIV. From the principles here eftablifhed it follows alfo, that the fovereign cannot, without the confent of the people or their reprefentatives, alienate the leaft part either of the public patrimony, or of the crown lands, of which he has only the ufe. But we muft diftinguifh between the goods themfelves and the profits or produce of them. The king may difpofe of the revenues or profits as he thinks proper, though he cannot alienate the principal.

XXXV. A prince indeed, who has a right of laying taxes if he thinks meet and juft, may, when

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the neceſſities of the commonwealth require it, mortgage a part of the public patrimony: for it is the ſame thing to the people, whether they give money to prevent the mortgage, or it be levied upon them afterwards in order to redeem it.

XXXVI. This however is to be underſtood upon ſuppoſition, that things are not otherwiſe regulated by the fundamental laws of the ſtate.

XXXVII. In reſpect to the alienation of the kingdom, or ſome part of it; from the principles hitherto eſtabliſhed, we may eaſily form a judgment of the matter.

And, 1°. if there be any ſuch thing as a patrimonial kingdom, it is evident that the ſovereign may alienate the whole, and ſtill more ſo, that he may transfer a part of it *.

XXXVIII. 2°. But if the kingdom be not poſſeſſed as a patrimony, the king cannot, by his own authority, transfer or alienate any part of it; for then the conſent of the people is neceſſary. Sovereignty of itſelf does not imply the right of alienation, and as the people cannot take the crown from the prince againſt his will, neither has the king a power of ſubſtituting another ſovereign in his place without their conſent.

XXXIX. 3°. But if only a part of the kingdom is to be alienated, beſides the approbation of the king

* See Grotius, lib. ii. cap. 6.

and that of the people, it is neceſſary that the inhabitants of the part, which is to be alienated, ſhould alſo conſent; and the latter ſeems to be the moſt neceſſary. It is to no purpoſe that the other parts of the kingdom agree to the alienation of this province, if the inhabitants themſelves oppoſe it. The right of the plurality of ſuffrages does not extend ſo far, as to cut off from the body of the ſtate thoſe who have not once violated their engagements, nor the laws of ſociety.

XL. And indeed it is evident, that the perſons who firſt erected the commonwealth, and thoſe who voluntarily came into it afterwards, bound themſelves, by mutual compact, to form a permanent body or ſociety, under one and the ſame government, ſo long at leaſt as they inclined to remain in the territories of the ſame ſtate; and it is with a view to the advantages which accrued to them in common from this reciprocal union, that they firſt erected the ſtate. This is the foundation of their compacts in regard to government. Therefore they cannot, againſt their will, be deprived of the right they have acquired of being a part of a certain body politic, except by way of puniſhment. Beſides, in this caſe, there is an *obligation* correſponding to the above *right*. The ſtate, by virtue of the ſame compact, has acquired a right over each of its members, ſo that no ſubject can put himſelf under a foreign government, nor diſclaim the authority of his natural ſovereign.

XLI. 4°. It is however to be obſerved, that there are two general exceptions to the principles here eſtabliſhed,

eſtabliſhed, both of them founded on the right and privileges ariſing from neceſſity. The firſt is, that though the body of the ſtate has not the right of alienating any of its parts, ſo as to oblige that part, againſt its will, to ſubmit to a new maſter, the ſtate however may be juſtified in abandoning one of its parts, when there is an evident danger of periſhing if they continue united.

XLII. It is true that even under thoſe circumſtances, the ſovereign cannot directly oblige one of his towns or provinces to ſubmit to another government. He only has a power to withdraw his forces, or abandon the inhabitants; but they retain the right of defending themſelves if they can: ſo that if they find they have ſtrength ſufficient to reſiſt the enemy, there is no reaſon why they ſhould not; and if they ſucceed, they may erect themſelves into a diſtinct commonwealth. Hence the conqueror becomes the lawful ſovereign of that particular country only by the conſent of the inhabitants, or by their ſwearing allegiance to him.

XLIII. It may be ſaid, that, properly ſpeaking, the ſtate or the ſovereign do not alienate, in this caſe, ſuch a part, but only renounce a ſociety whoſe engagements are at an end by virtue of a tacit exception ariſing from neceſſity. After all, it would be in vain for the body to perſiſt in defending ſuch a part, ſince we ſuppoſe it unable to preſerve or defend itſelf. It is therefore a mere misfortune which muſt be ſuffered by the abandoned part.

XLIV. 5°. But if this be the right of the body with reſpect to the part, the part has alſo, in like circumſtances, the ſame right with regard to the body. Thus we cannot condemn a town, which, after having made the beſt reſiſtance it could, chuſes rather to ſurrender to the enemy, than be pillaged and expoſed to fire and ſword.

XLV. In a word, every one has a natural right to take care of his own preſervation by all poſſible means; and it is principally for the better attainment of this end, that men have entered into civil ſocieties. If therefore the ſtate can no longer defend and protect the ſubjects, they are diſengaged from the ties they were under, and reſume their original right of taking care of themſelves, independently of the ſtate, in the manner they think moſt proper. Thus things are equal on both ſides; and the ſentiment of Grotius, who refuſes the body of the ſtate, with reſpect to the part, the ſame right which he grants the part with reſpect to the body, cannot be maintained.

XLVI. We ſhall conclude this chapter with two remarks. The firſt is, that the maxim which ſome politicians inculcate ſo ſtrongly, namely, that the goods appropriated to the crown are abſolutely unalienable, is not true, except on the terms, and agreeably to the principles here eſtabliſhed. What the ſame politicians add, that an alienation, ſucceeded by a peaceable poſſeſſion for a long courſe of years, does not hinder a future right to what belonged to the crown, and the reſumption of it by main force, on the firſt occaſion, is altogether unreaſonable.

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The ſecond obſervation is, that ſince it is not lawful for a king, independently of the will of the people or of their repreſentatives, to alienate the whole or any part of his kingdom, it is not right for him to render it feudatory to another prince; for this is evidently a kind of alienation.

The END *of the* THIRD PART.

THE

THE

PRINCIPLES

OF

POLITIC LAW.

PART IV.

In which are considered the different rights of sovereignty with respect to foreign states; the right of war, and every thing relating to it; public treaties, and the right of ambassadors.

CHAP. I.

Of war in general, and first of the right of the sovereign, in this respect, over his subjects.

I. WHATEVER has been hitherto said of the essential parts of sovereignty, properly and directly regards the internal administration of the state. But as the happiness and prosperity of a nation demands not only that order and peace should be maintained at home, but also that the state should be protected from the insults of enemies abroad, and obtain

tain all the advantages it can from other nations; we ſhall proceed to examine thoſe parts of ſovereignty which directly regard the ſafety and external advantages of the ſtate, and diſcuſs the moſt eſſential queſtions relating to this ſubject.

II. To trace things from their original, we muſt firſt obſerve, that mankind being divided into ſeveral ſocieties called *ſtates* or *nations*, and thoſe political bodies forming a kind of ſociety among themſelves, are alſo ſubjected to thoſe primitive and general laws, which God has given to all mankind, and conſequently they are obliged to practiſe certain duties towards each other.

III. It is the ſyſtem or aſſemblage of thoſe laws that is properly called the law of *nations*: and theſe are no more than the laws of nature, which men, conſidered as members of ſociety, in general, ought to practiſe towards each other; or, in other words, the law of nations is no more than the general law of *ſociability*, applied not to individuals compoſing a ſociety, but to men, as forming different bodies called *ſtates* or *nations*.

IV. The natural ſtate of nations, with reſpect to each other, is certainly that of ſociety and peace. Such is the natural and primitive ſtate of one man with reſpect to another; and whatever alteration mankind may have made in regard to their original ſtate, they cannot, without violating their duty, break in upon that ſtate of peace and ſociety, in which nature has placed them, and which, by her

laws,

laws, ſhe has ſo ſtrongly recommended to their obſervance.

V. Hence proceed ſeveral maxims of the law of nations; for example, that all ſtates ought to look upon themſelves as naturally equal and independent, and to treat each other as ſuch on all occaſions: likewiſe that they ought to do no injury to any other, but, on the contrary, repair that which they may have committed. Hence alſo ariſes their right of endeavouring to provide for their ſafety and happineſs, and of employing force and arms againſt thoſe who declare themſelves their enemies. Fidelity in treaties and alliances, and the reſpect due to ambaſſadors, are derived from the ſame principle. This is the idea we ought to form of the law of nations in general.

VI. We do not here propoſe to enter into all the political queſtions which may be ſtarted concerning the law of nations; we ſhall only examine the following articles, which, being the moſt conſiderable, include almoſt all the reſt, I mean the *right of war*, that of *treaties and alliances*, and that of *ambaſſadors*.

VII. The ſubject of the right of war being equally important and extenſive, merits to be treated with great exactneſs. We have already obſerved, that it is a fundamental maxim of the law of nature and nations, that individuals and ſtates ought to live in a ſtate of union and ſociety, that they ſhould not injure each other, but, on the contrary,

trary, they ſhould mutually exerciſe the duties of humanity.

VIII. Whenever men practiſe theſe duties, they are ſaid to be in a ſtate of peace. This ſtate is certainly the moſt agreeable to our nature, as well as the moſt capable of promoting happineſs; and indeed the law of nature was intended chiefly to eſtabliſh and preſerve it.

IX. The ſtate oppoſite to that of union and peace, is what we call *war*, which, in the moſt general ſenſe, is no more than the ſtate of thoſe who try to determine their differences by the ways of force. I ſay, this is the moſt general ſenſe, for, in a more limited ſignification, common uſe has reſtrained the word *war* to that carried on between ſovereign powers*.

X. Though a ſtate of peace and mutual benevolence is certainly moſt natural to man, and moſt agreeable to the laws which ought to be his guide, war is nevertheleſs permitted in certain circumſtances, and ſometimes neceſſary both for individuals and nations. This we have ſufficiently ſhewn in the ſecond part of this work, by eſtabliſhing the rights with which nature has inveſted mankind for their own preſervation, and the means they may lawfully employ for attaining that end. The principles of this kind, which we have eſtabliſhed with reſpect to particulars, equally, and even for ſtronger reaſons, are applicable to nations.

* See lower down, chap. iii.

XI. The

XI. The law of God no leſs enjoins a whole nation to take care of their preſervation, than it does private men. It is therefore juſt that they ſhould employ force againſt thoſe, who, declaring themſelves their enemies, violate the law of ſociability towards them, refuſe them their due, ſeek to deprive them of their advantages, and even to deſtroy them. It is therefore for the good of ſociety, that people ſhould be able to repreſs the malice and efforts of thoſe who ſubvert the foundations of it; otherwiſe the human ſpecies would become the victims of robbery and licentiouſneſs: for the right of making war is, properly ſpeaking, the moſt powerful means of maintaing peace.

XII. Hence it is certain that the ſovereign, in whoſe hands the intereſt of the whole ſociety is lodged, has a right to make war: but if it be ſo, we muſt of courſe allow him the right of employing the ſeveral means neceſſary for that end. In a word, we muſt grant him the power of levying troops, and obliging them to perform the moſt dangerous duties even at the peril of their lives. And this is one branch of the right of life and death which manifeſtly belongs to the ſovereign.

XIII. But as the ſtrength and valour of troops depend, in great meaſure, on their being well diſciplined, the ſovereign ought, even in times of peace, to train the ſubjects up to martial exerciſes, to the end that they may, when occaſion requires, be more able to ſuſtain the fatigues, and perform the different duties of war.

XIV. The

XIV. The obligation, under which subjects are in this respect, is so rigorous and strong, that, strictly speaking, no man can be exempted from taking up arms when his country calls upon him for assistance; and his refusal would be a just reason not to tolerate such a person any longer in the society. If in most governments there are some subjects exempted from military exercises, this immunity is not a privilege that belongs to them by right; it is only a toleration that has no force, but when there are troops sufficient for the defence of the commonwealth, and the persons to whom it is granted follow some other useful and necessary employment. Excepting this case, in time of need all the members of the state ought to take the field, and none can be lawfully exempted.

XV. In consequence of these principles, military discipline should be very rigorous; the smallest neglect, or the least fault, is often of the last importance, and for that reason may be severely punished. Other judges make some allowance for the weakness of human nature, or the violence of passions; but in a council of war, there is not so much indulgence; death is often inflicted on a soldier, whom the dread of that very evil has induced to quit his post.

XVI. It is therefore the duty of those who are once enlisted, to maintain the post where the general has placed them, and to fight bravely, even though they run a risque of losing their lives. To conquer or die, is the law of such engagements; and it is certainly much better to lose one's life gloriously, by endeavouring to destroy that of the enemy, than to

die in a cowardly manner. Hence ſome judgment may be formed of what we ought to think of thoſe captains of ſhips, who, by the orders of their ſuperior, blow themſelves up into the air, rather than fall into the hands of the enemy. Suppoſe the number of ſhips equal on both ſides, if one of our veſſels is taken, the enemy will have two more than we; whereas if one of ours is ſunk, they will have but one more; and if the veſſel, which wants to take ours, ſinks with it, which often happens, the forces will remain equal.

XVII. In regard to the queſtion, whether ſubjects are obliged to take up arms, and ſerve in an unjuſt war, we muſt judge of it by the principles already eſtabliſhed at the end of the firſt chapter of the third part, which treats of *the legiſlative power*.

XVIII. Theſe are the obligations of ſubjects with reſpect to war and to the defence of government; but this part of the ſupreme power being of great importance, the utmoſt precaution is required in the ſovereign to exerciſe it in ſuch a manner as may prove advantageous to the ſtate. We ſhall here point out the principal maxims on this article of politics.

XIX. Firſt then it is evident, that the force of a ſtate, with reſpect to war, conſiſts chiefly in the number of its inhabitants; ſovereigns therefore ought to neglect nothing that can either ſupport or augment the number of them.

XX. Among the other means, which may be
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ufed for this purpofe, there are three of great efficacy. The firft is, eafily to receive all ftrangers of a good character, who want to fettle among us; to let them tafte the fweets of government; and to make them fhare the advantages of civil liberty. Thus the ftate is filled with fubjects, who bring with them the arts, commerce, and riches; and among whom we may, in time of need, find a confiderable number of good foldiers.

XXI. Another thing, conducive to the fame end, is to favour and encourage marriages, which are the pledges of the ftate; and to make good laws for this purpofe. The mildnefs of the government may, among other things, greatly contribute to incline the fubjects to join together in wedlock. People loaded with taxes, who can hardly, by their labour, find wherewithal to fupply the wants of life and the public charges, are not inclined to marry, left their children fhould ftarve for hunger.

XXII. Laftly, another means, very proper for maintaining and augmenting the number of inhabitants, is liberty of confcience. Religion is one of the greateft advantages of mankind, and all men view it in that light. Every thing tending to deprive them of this liberty, appears infupportable. They cannot eafily accuftom themfelves to a government which tyrannizes over them in this article. France, Spain and Holland, prefent us with fenfible proofs of the truth of thefe obfervations. Perfecutions have deprived the firft of a great part of her inhabitants; by which means fhe has been confiderably weakened. The

ſecond is almoſt unpeopled; and this depopulation is occaſioned by the barbarous and tyrannical eſtabliſhment called the *Inquiſition*, an eſtabliſhment equally affronting to God and pernicious to human ſociety, and which has made a kind of deſert of one of the fineſt countries in Europe. The third, in conſequence of an entire liberty of conſcience, which ſhe offers to all the world, is conſiderably improved even amidſt wars and diſaſters. She has raiſed herſelf, as it were, on the ruin of other nations, and by the number of her inhabitants, who have brought power, commerce and riches into her boſom, ſhe enjoys a high degree of credit and proſperity.

XXIII. The great number of inhabitants is therefore the principal ſtrength of a country. But, for this end, the ſubjects muſt alſo be inured betimes to labour, and trained to virtue. Luxury, effeminacy, and pleaſure, impair the body and enervate the mind. A prince therefore, who deſires to put the military eſtabliſhment on a proper footing, ought to take particular care of the education of youth, ſo as to procure his ſubjects the means of forming themſelves, by a ſtrict diſcipline, to bodily exerciſes, and to prevent luxury and pleaſures from debauching their manners, or weakening their courage.

XXIV. Laſtly, one of the moſt effectual means of having good troops, is to make them obſerve the military order and diſcipline with all poſſible care and exactneſs; to take particular care that the ſoldiers be punctually paid; to ſee that the ſick be properly looked after, and to furniſh them with the aſſiſtance they

they ſtand in need of; laſtly, to preſerve among them a knowledge of religion and of the duties it preſcribes, by procuring them the means of inſtruction. Theſe are the principal maxims which good policy ſuggeſts to ſovereigns, by means of which they may reaſonably hope always to find good troops among their ſubjects, ſuch as ſhall be diſpoſed to ſpill the laſt drop of their blood in defence of their country.

CHAP. II.

Of the cauſes of war.

I. IF war be ſometimes lawful, and even neceſſary, as we have already demonſtrated; this is to be underſtood when it is undertaken only for juſt reaſons, and on condition that the prince, who undertakes it, propoſes, by that method, to obtain a ſolid and laſting peace. A war may therefore be either juſt or unjuſt, according to the cauſe which has produced it.

II. A war is juſt if undertaken for juſt reaſons; and unjuſt if it be entered into without a cauſe, or at leaſt without a juſt and ſufficient motive.

III. To illuſtrate the matter, we may, with Grotius, diſtinguiſh between the juſtifying reaſons, and the motives of the war. The former are thoſe which render, or ſeem to render, the war juſt with reſpect to the enemy, ſo that in taking up arms againſt him we do not think we do him injuſtice.

The latter are the views of intereſt which determine a prince to come to an open rupture. Thus in the war of Alexander againſt Darius, the juſtifying reaſon of the former was, to revenge the injuries which the Greeks had received from the Perſians. The motives were, the ambition, vanity, and avarice of that conqueror, who took up arms the more chearfully, as the expeditions of Xenophon and Ageſilaus made him conceive great hopes of ſucceſs. The juſtifying reaſon of the ſecond *Punic* war was, a diſpute about the city of Saguntum. The motive was, an old grudge entertained by the Carthaginians againſt the Romans for the hard terms they were obliged to ſubmit to when reduced to a low condition, and the encouragement given them by the ſucceſs of their arms in Spain.

IV. In a war, perfectly juſt, the juſtifying reaſons muſt not only be lawful, but alſo be blended with the motive; that is, we muſt never undertake a war but from the neceſſity of defending ourſelves againſt an inſult, of recovering our undoubted right, or of obtaining ſatisfaction for a manifeſt injury.

V. Thus a war may be vicious or unjuſt, with reſpect to the cauſes, four different ways.

1°. When we undertake it without any juſt reaſon, or ſo much as an apparent motive of advantage, but only from a fierce and brutal fury, which delights in blood and ſlaughter. But it may be doubted, whether we can find an example of ſo barbarous a war.

VI. 2°. When

VI. 2°. When we attack others only for our own intereſt, without their having done us any injury; that is, when we have no juſtifying cauſes: and theſe wars are, with reſpect to the aggreſſor, downright robberies.

VII. 3°. When we have ſome motives founded on juſtifying cauſes, but which have ſtill only an apparent equity, and when well examined, are found at the bottom to be unlawful.

VIII. 4°. Laſtly, we may ſay that a war is alſo unjuſt, when, though we have good juſtifying reaſons, yet we undertake it from other motives, which have no relation to the injury received; as for inſtance, through vain glory, or the deſire of extending our dominions, &c.

IX. Of theſe four ſorts of war, the undertaking of which includes injuſtice, the third and laſt are very common, for there are few nations ſo barbarous as to take up arms without alledging ſome ſort of juſtifying reaſons. It is not difficult to diſcover the injuſtice of the third; as to the fourth, though perhaps very common, it is not ſo much unjuſt in itſelf, as with reſpect to the view and deſign of the perſon who undertakes it. But it is very difficult to convince him of it, the motives being generally impenetrable, or at leaſt moſt princes taking great care to conceal them *.

* See the explication of theſe principles in Budeus's Juriſprud. hiſt. ſpecim. § 28, &c.

X. From the principles here eftablifhed we may conclude, that every juft war muft be made, either to defend ourfelves and our property againft thofe who endeavour to injure us by affaulting our perfons, and by taking away or ruining our eftates; or to conftrain others to yield up to us what they ought to do, when we have a perfect right to require it of them; or laftly, to obtain fatisfaction for the damages we have injuriously fuftained, and to force thofe who did the injury to give fecurity for their good behaviour.

XI. From hence we eafily conceive what the caufes of war may be. But to illuftrate the fubject ftill further, we fhall give fome examples of the principal unjuft caufes of war.

1°. Thus, for example, to have a juft reafon for war, it is not fufficient that we are afraid of the growing power of a neighbour. All we can do, in thofe circumftances, is innocently to try to obtain *real caution*, that he will attempt nothing againft us; and to put ourfelves in a pofture of defence. But acts of hoftility are not permitted, except when neceffary, and they are never neceffary fo long as we are not morally certain that the neighbour we dread has not only the power, but alfo the inclination to attack us. We cannot, for inftance, juftly declare war againft a neighbour, purely becaufe he orders citadels or fortifications to be erected, which he may fome time or other employ to our prejudice.

XII. 2°. Neither does utility alone give the fame right as neceffity, nor is it fufficient to render

a war

a war lawful. Thus, for example, we are not allowed to take up arms with a view to make ourſelves maſters of a place which lies conveniently for us, and is proper to cover our frontiers.

XIII. 3°. We muſt ſay the ſame of the deſire of changing our former ſettlements, and of removing from marſhes and deſerts to a more fertile ſoil.

4°. Nor is it leſs unjuſt to invade the rights and liberty of a people, under a pretext of their not being ſo poliſhed in their manners, or of ſuch quick underſtanding as ourſelves. It was therefore unjuſt in the Greeks to treat thoſe, whom they called *Barbarians*, as their natural enemies, on account of the diverſity of their manners, and perhaps becauſe they did not appear to be ſo ingenious as themſelves.

XIV. 5°. It would alſo be an unjuſt war to take up arms againſt a nation, in order to bring them under ſubjection, under pretence of its being their intereſt to be governed by us. Though a thing may be advantageous to a perſon, yet this does not give us a right to compel him to it. Whoever has the uſe of reaſon, ought to have the liberty of chooſing what he thinks advantageous to himſelf.

XV. We muſt alſo obſerve, that the duties which nations ought to practiſe towards each other, are not all equally obligatory, and that their deficiency in this reſpect does not always lay a foundation for a juſt war. Among nations, as well as individuals, there are duties attended with a rigorous and perfect obligation, the violation of which implies *an injury*

properly

properly ſo called; and duties of an imperfect obligation, which give to another only an imperfect right. And as we cannot, in a diſpute between individuals, have recourſe to courts of law to recover what in this ſecond manner is our due; ſo neither can we, in conteſts between different powers, conſtrain them by force of arms.

XVI. We muſt however except from this rule, the caſes of neceſſity in which the *imperfect* is *changed* into the *perfect right*; ſo that, in thoſe caſes, the refuſal of him, who will not give us our due, furniſhes us with a juſt reaſon for war. But every war, undertaken on account of the refuſal of what a man is not obliged by the laws of humanity to grant, is unjuſt.

XVII. To apply theſe principles, we ſhall give ſome examples. The right of paſſing over the lands of another is really founded on humanity, when we deſign to uſe that permiſſion only on a lawful account; as when people, expelled their own country, want to ſettle elſewhere; or when, in the proſecution of a juſt war, it is neceſſary to paſs through the territories of a neutral nation, &c. But this is only an office of humanity which is not due to another in virtue of a perfect and rigorous right, and the refuſal of it does not authoriſe a nation to challenge it in a forcible manner.

XVIII. Grotius however, examining this queſtion, pretends, "that we are not only obliged to grant a "paſſage over our lands to a ſmall number of men "unarmed,

"unarmed, and from whom we have consequently "nothing to fear; but moreover that we cannot "refuse it to a large army, notwithstanding the just "apprehension we may have that this passage will "do us a considerable injury, which is likely to arise "either from that army itself, or from those against "whom it marches: provided, continues he, 1°. that "this passage is asked on a just account. 2°. That "it is asked before an attempt is made to pass by "force."

XIX. This author then pretends, that, under those circumstances, the refusal authorises us to have recourse to arms, and that we may lawfully procure by force, what we could not obtain by favour, even though the passage may be had elsewhere by taking a larger circuit. He adds, "That the suspicion of "danger from the passing of a great number of "armed men, is not a sufficient reason to refuse it, "because good precautions may be taken against it. "Neither is the fear of provoking that prince, "against whom the other marches his army, a sufficient reason for refusing him passage, if the latter has a just reason for undertaking the war."

XX. Grotius founds his opinion on this reason, that the establishment of property was originally made with the tacit reservation of the right of using the property of another in time of need, so far as it can be done without injuring the owner.

XXI. But I cannot embrace the opinion of this celebrated writer; for, 1°. whatever may be said, it

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is certain that the right of paſſing through the territories of another is not a perfect right, the execution of which can be rigorouſly demanded. If a private perſon is not obliged to ſuffer another to paſs through his ground, much leſs is a nation obliged to grant a paſſage to a foreign army, without any compact or conceſſion intervening.

XXII. 2°. The great inconveniencies which may follow ſuch a permiſſion, authoriſe this refuſal. By granting ſuch a paſſage, we run a riſque of making our own country the ſeat of war. Beſides, if they, to whom we grant the paſſage, are repulſed and vanquiſhed, let the reaſons they had for making war be ever ſo juſt, yet will not the enemy revenge himſelf upon us who did not hinder thoſe troops from invading him? But farther, ſuppoſe that we live in friendſhip with both the princes who are at war, we cannot favour one to the prejudice of the other, without giving this other a ſufficient reaſon to look upon us as enemies, and as defective in that part of our duty which we owe to our neighbours. It would be in vain, on this occaſion, to diſtinguiſh between a juſt and an unjuſt war, pretending that the latter gives a right of refuſing the paſſage, but that the former obliges us to grant it. This diſtinction does not remove the difficulty; for, beſides that it is not always eaſy to decide whether a war be juſt or unjuſt, it is a piece of raſhneſs to thruſt in our arbitration between two armed parties, and to intermeddle with their differences.

XXIII. 3°. But is there nothing to fear from the troops

troops to whom the paſſage is granted? The abettors of the contrary opinion agree there is, for which reaſon they allow that many precautions ought to be obſerved. But whatever precautions we may take, none of them can ſecure us againſt all events; and ſome evils and loſſes are irreparable. Men that are always in arms are eaſily tempted to abuſe them, and to commit outrages; eſpecially if they be numerous, and find an opportunity of making a conſiderable booty. How often have we ſeen foreign armies ravage and appropriate to themſelves the eſtates of a people who have called them to their aſſiſtance? Nor have the moſt ſolemn treaties and oaths been able to deter them from this black perfidiouſneſs *. What then may we expect from thoſe who are under no ſuch ſtrict engagement?

XXIV. 4°. Another obſervation we may make, which is of great uſe in politics, that almoſt all ſtates have this in common, that the further we advance into the heart of a country, the weaker we find it. The Carthaginians, otherwiſe invincible, were vanquiſhed near Carthage by Agathocles and Scipio. Hannibal affirmed, that the Romans could not be conquered except in Italy. It is therefore dangerous to lay open this ſecret to a multitude of foreigners, who, having arms at hand, may take advantage of our weakneſs, and make us repent our imprudence.

XXV. 5°. To this we muſt add, that in every ſtate there are almoſt always mutinous and turbulent ſpirits, who are ready to ſtir up ſtrangers either againſt their

* See Juſt. lib. iv. cap. 4. and 8. and Liv. lib. vii. cap. 38.

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fellow-citizens, their ſovereign, or their neighbours. Theſe reaſons ſufficiently prove, that all the precautions which can be taken cannot ſecure us from danger.

6°. Laſtly, we may add the example of a great many nations, who have been very ill requited for letting foreign troops paſs through their country.

XXVI. We ſhall finiſh the examination of this queſtion by making two remarks. The firſt is, that it is evident from the whole of what has been ſaid, that this is a matter of prudence; and that though we are not obliged to grant a paſſage to foreign troops, and the ſafeſt way is to refuſe it, yet when we are not ſtrong enough to reſiſt thoſe who want to paſs at any rate, and by reſiſting we muſt involve ourſelves in a troubleſome war, we ought certainly to grant a paſſage; and the neceſſity to which we are reduced, is a ſufficient juſtification to the prince whoſe territories thoſe troops are going to invade.

XXVII. My ſecond remark is, that if we ſuppoſe, on one hand, that the war which the prince, who demands a paſſage through our country, makes, is juſt and neceſſary, and, on the other, that we have nothing to fear either from him that is to paſs, or him againſt whom he marches; we are then indiſpenſably obliged to grant a paſſage. For if the law of nature obliges every man to aſſiſt thoſe whom he ſees manifeſtly oppreſſed, when he can do it without danger and with hopes of ſucceſs, much leſs ought he to be a hindrance to ſuch as undertake their own defence.

XXVIII. By

XXVIII. By following the principles here eſtabliſhed, we may judge of the right of tranſporting merchandizes through the territories of another. This is alſo an imperfect right, and a duty of humanity, which obliges us to grant it to others; but the obligation is not rigorous, and the refuſal cannot be a juſt reaſon for war.

XXIX. Truly ſpeaking, the laws of humanity indiſpenſably oblige us to grant a paſſage to ſuch foreign commodities as are abſolutely neceſſary for life, which our neighbours cannot procure by themſelves, and with which we are not able to furniſh them. But, except in this caſe, we may have good reaſons for hindering foreign commodities from paſſing through our country. Too great a reſort of ſtrangers is ſometimes dangerous to a ſtate; and beſides, why ſhould not a ſovereign procure to his own ſubjects that profit, which would otherwiſe be made by foreigners, by means of the paſſage granted them?

XXX. It is not however contrary to humanity to require toll or cuſtom for foreign commodities to which a paſſage is granted. This is a juſt reimburſement for the expences the ſovereign is obliged to be at in repairing the high roads, bridges, harbours, &c.

XXXI. We muſt reaſon in the ſame manner in regard to commerce in general between different ſtates. The ſame may be ſaid of the right of being ſupplied with wives by our neighbours; a refuſal on their ſide, though there be great plenty of women among them, does not authorize us to declare war.

XXXII. We ſhall here ſubjoin ſomething concerning wars undertaken on account of religion. The law of nature, which permits a man to defend his life, his ſubſtance, and all the other advantages which he enjoys, againſt the attacks of an unjuſt aggreſſor, certainly grants him the liberty alſo of defending himſelf againſt thoſe who would, as it were by force, deprive him of his religion, by hindering him to profeſs that which he thinks the beſt, or by conſtraining him to embrace that which he thinks to be falſe.

XXXIII. In a word, religion is one of the greateſt bleſſings man can enjoy, and includes his moſt eſſential intereſts. Whoever oppoſes him in this reſpect, declares himſelf his enemy; and conſequently he may juſtly uſe forcible methods to repel the injury, and to ſecure himſelf againſt the evil intended him. It is therefore lawful, and even juſt, to take up arms, when we are attacked for the cauſe of religion.

XXXIV. But though we are allowed to defend ourſelves in the cauſe of religion, we are not permitted to make war in order to propagate that which we profeſs, and to conſtrain thoſe who have ſome principle or practice different from ours. The one is a neceſſary conſequence of the other. It is not lawful to attack him who has a right to defend himſelf. If the defenſive war is juſt, the offenſive muſt needs be criminal. The very nature of religion does not permit that violent means ſhould be uſed for its propagation; it conſiſts in the internal perſuaſion. The right of mankind, in regard to the propagation of religion, is to inform and inſtruct thoſe who are in

in an error, and to uſe the ſoft and gentle methods of conviction. Men muſt be perſuaded, and not compelled. To act otherwiſe, is to commit a robbery on them; a robbery ſo much the more criminal, as thoſe who commit it endeavour to juſtify themſelves by ſacred authority. There is therefore no leſs folly, than impiety, in ſuch a conduct.

XXXV. In particular, nothing is more contrary to the ſpirit of Chriſtianity, than to employ the force of arms for the propagation of our holy religion. Chriſt, our divine maſter, inſtructed mankind, but never treated them with violence. The apoſtles followed his example; and the enumerations which St. Paul makes of the arms he employed for the converſion of mankind, is an excellent leſſon to Chriſtians *.

XXXVI. So far is a ſimple difference of opinion, in matters of religion, from being a juſt reaſon for purſuing, by force of arms, or diſturbing in the leaſt, thoſe whom we think in an error; that, on the contrary, ſuch as act in this manner, furniſh others with a juſt reaſon of making war againſt them, and of defending thoſe whom they unjuſtly oppreſs. Upon which occaſion the following queſtion occurs: *Whether proteſtant princes may not, with a good conſcience, enter into a confederacy to deſtroy the Inquiſition, and oblige the powers, who ſuffer it in their dominions, to diſarm that cabal, under which Chriſtianity has ſo long groaned, and which, under a falſe pretence to zeal and piety, exerciſes a tyranny moſt horrible in itſelf,*

* 2 Cor. chap. vi. ver. 4, &c. and chap. x. ver. 4.

 and

and moſt contrary to human nature? Be that as it may, it is at leaſt certain, that never would any hero have ſubdued monſters more furious and deſtructive to mankind, than he who could accompliſh the deſign of purging the earth of theſe wicked men, who ſo impudently and cruelly abuſe the ſpecious ſhew of religion, only to procure wherewith to live in luxury and idleneſs, and to make both princes and ſubjects dependent on them.

XXXVII. Theſe are the principal remarks which occur on the cauſes of war. To which let us add, that as we ought not to make war, which of itſelf is a very great evil, but to obtain a ſolid peace, it is abſolutely neceſſary to conſult the rules of prudence before we undertake it, however juſt it may otherwiſe appear. We muſt, above all things, exactly weigh the good or evil, which we may bring upon ourſelves by it: For if in making war, there is reaſon to fear that we ſhall draw greater evils on ourſelves, or thoſe that belong to us, than the good we can propoſe from it; it is better to put up with the injury, than to expoſe ourſelves to more conſiderable evils, than that for which we ſeek redreſs by arms.

XXXVIII. In the circumſtances here mentioned we may lawfully make war, not only for ourſelves, but alſo for others; provided that he, in whoſe favour we engage, has juſt reaſon to take up arms, and that we are likewiſe under ſome particular tie or obligation to him, which authoriſes us to treat as enemies thoſe who have done us no injury.

XXXIX. Now

XXXIX. Now among thofe, whom we may and ought to defend, we muft give the firft place to fuch as depend on the defender, that is, to the fubjects of the ftate; for it is principally with this view of protection that men, before independent, incorporated themfelves into civil fociety. Thus the Gibeonites having fubmitted themfelves to the government of the Ifraelites, the latter took up arms on their account, under the command of Jofhua. The Romans alfo proceeded in the fame manner. But fovereigns in thefe cafes ought to obferve the maxim we have eftablifhed in fect. 37. They ought to beware in taking up arms for fome of their fubjects, not to bring a greater inconveniency on the body of the ftate. The duty of the fovereign regards firft and principally the intereft of the whole, rather than that of a part; and the greater the part is, the nearer it approaches to the whole.

XL. 2°. Next to fubjects come our allies, whom we are exprefsly engaged by treaty to affift in time of need; and this, whether they have put themfelves entirely under our protection, and fo depend upon it; or whether affiftance be agreed upon for mutual fecurity.

XLI. But the war muft be juftly undertaken by our ally; for we cannot innocently engage to help any one in a war, which is manifeftly unjuft. Let us add here, that we may, even without prejudice to the treaty, defend our own fubjects preferably to our allies, when there is no poffibility of affifting

them both at the ſame time; for the engagements of a government to its ſubjects always ſuperſede thoſe into which it enters with ſtrangers.

XLII. As to what Grotius ſays, that we are not obliged to aſſiſt an ally, when there is no hope of ſucceſs; it is to be underſtood in this manner. If we ſee that our united forces are not ſufficient to oppoſe the enemy, and that our ally, though able to treat with him on tolerable terms, is yet obſtinately bent to expoſe himſelf to certain ruin; we are not obliged, by the treaty of alliance, to join with him in ſo extravagant and deſperate an attempt. But then it is alſo to be conſidered, that alliances would become uſeleſs, if, in virtue of this union, we were not obliged to expoſe ourſelves to ſome danger, or to ſuſtain ſome loſs in the defence of an ally.

XLIII. Here it may be enquired; when ſeveral of our allies want aſſiſtance, which ought to be helped firſt, and preferably to the reſt? Grotius anſwers, that when two allies unjuſtly make war upon each other, we ought to ſuccour neither of them; but if the cauſe of one ally be juſt, we muſt not only aſſiſt him againſt ſtrangers, but alſo againſt another of our allies, unleſs there be ſome particular clauſe in a treaty, which does not permit us to defend the former againſt the latter, even though the latter has committed the injury. In fine, that if ſeveral of our allies enter into a league againſt a common foe, or make war ſeparately againſt particular enemies, we muſt aſſiſt them all equally,

and

and according to treaty; but when there is no poſſibility of aſſiſting them all at once, we muſt give the preference to the oldeſt confederate.

XLIV. 3°. Friends, or thoſe with whom we are united by particular ties of kindneſs and affection, hold the third rank. For though we have not promiſed them aſſiſtance, determined by a formal treaty; yet the nature of friendſhip itſelf implies a mutual engagement to help each other, ſo far as the ſtricter obligations the friends are under will permit; and the concern for each other's ſafety ought to be much ſtronger, than that which is demanded by the ſimple connection of humanity.

XLV. I ſay that we may take up arms for our friends, who are engaged in a juſt war; for we are not under a ſtrict obligation to aſſiſt them: and this condition ought to be underſtood; if we can do it eaſily, and without any great inconveniency to ourſelves.

XLVI. 4°. In fine, we may affirm that the ſingle relation, in which all mankind ſtand to each other, in conſequence of their common nature and ſociety, and which forms the moſt extenſive connection, is ſufficient to authoriſe us in aſſiſting thoſe who are unjuſtly oppreſſed; at leaſt, if the injuſtice be conſiderable, and manifeſt, and the party injured call us to his aſſiſtance; ſo that we act rather in his name, than in our own. But even here we muſt make this remark, that we have a right to ſuccour the diſtreſſed purely from humanity, but that

we are not under a ſtrict obligation of doing it. It is a duty of imperfect obligation, which binds us only ſo far as we can practiſe it, without bringing a conſiderable inconveniency upon ourſelves; for all circumſtances being equal, we may, and even ought to prefer our own preſervation to that of another.

XLVII. It is another queſtion, whether we can undertake a war in defence of the ſubjects of a foreign prince, againſt his invaſions and oppreſſions, merely from the principle of humanity? I anſwer, that this is permitted only in caſes where the tyranny is riſen to ſuch a height, that the ſubjects themſelves may lawfully take up arms, to ſhake off the yoke of the tyrant, according to the principles already eſtabliſhed.

XLVIII. It is true; that ſince the inſtitution of civil ſocieties, the ſovereign has acquired a peculiar right over his ſubjects, in virtue of which he can puniſh them, and no other power has any buſineſs to interfere. But it is no leſs certain, that this right hath its bounds, and that it cannot be lawfully exerciſed, except when the ſubjects are really culpable, or at leaſt when their innocence is dubious. Then the preſumption ought to be in favour of the ſovereign, and a foreign power has no right to intermeddle with what paſſes in another ſtate.

XLIX. But if the tyranny be arrived at its greateſt height, if the oppreſſion be manifeſt, as when a

Buſiris

Busiris or Phalaris oppress their subjects in so cruel a manner, as must be condemned by every reasonable man living; we cannot refuse the subjects, thus oppressed, the protection of the laws of society. Every man, as such, has a right to claim the assistance of other men when he is really in necessity; and every one is obliged to give it him, when he can, by the laws of humanity. Now it is certain, that we neither do, nor can renounce those laws, by entering into society, which could never have been established to the prejudice of human nature: though we may be justly supposed to have engaged, not to implore a foreign aid for slight injuries, or even for great ones, which affect only a few persons.

But when all the subjects, or a considerable part of them, groan under the oppression of a tyrant, the subjects, on the one hand, re-enter into the several rights of natural liberty, which authorises them to seek assistance wherever they can find it; and, on the other hand, those who are in a condition of giving it them, without any considerable damage to themselves, not only may, but ought to do all they can to deliver the oppressed, for the single consideration of pity and humanity.

L. It appears indeed, from ancient and modern history, that the desire of invading the states of others is often covered by those pretexts; but the bad use of a thing, does not hinder it from being just. Pirates navigate the seas, and robbers wear swords, as well as other people.

CHAP. III.

Of the different kinds of war.

I. BESIDES the divifion above-mentioned of war into juft and unjuft, there are feveral others, which it is proper now to confider. And firft, war is diftinguifhed into *offenfive* and *defenfive*.

II. Defenfive wars are thofe undertaken for the defence of our perfons, or the prefervation of our properties. Offenfive wars are thofe which are made to conftrain others to give us our due, in virtue of a perfect right we have to exact it of them; or to obtain fatisfaction for a damage unjuftly done us, and to force them to give caution for the future.

III. 1°. We muft therefore take care not to confound this with the former diftinction; as if every defenfive war were juft, and, on the contrary, every offenfive war unjuft. It is the prefent cuftom to excufe the moft unjuft wars, by faying they are purely defenfive. Some people think that all unjuft wars ought to be called offenfive, which is not true; for if fome offenfive wars be juft, as there is no doubt of it, there are alfo defenfive wars unjuft; as when we defend ourfelves againft a prince who has had fufficient provocation to attack us.

IV. 2°. Neither are we to believe, that he who firft injures another, begins by that an offenfive war, and that the other, who demands fatisfaction for the

injury, is always upon the defenſive. There are a great many unjuſt acts which may kindle a war, and yet are not the war; as the ill treatment of a prince's ambaſſador, the plundering of his ſubjects, &c. If therefore we take up arms to revenge ſuch an unjuſt act, we commence an offenſive, but a juſt war; while the prince who has done the injury, and will not give ſatisfaction, makes a defenſive, but an unjuſt war. An offenſive war is therefore unjuſt only, when it is undertaken without a lawful cauſe; and then the defenſive war, which on other occaſions might be unjuſt, becomes juſt.

V. We muſt therefore affirm, in general, that the firſt who takes up arms, whether juſtly or unjuſtly, commences an offenſive war; and he who oppoſes him, whether with or without a reaſon, begins a defenſive war. Thoſe who look upon the word *offenſive war* to be an odious term, as always implying ſomething unjuſt; and who, on the contrary, conſider a defenſive war as inſeparable from equity, confound ideas, and perplex a thing, which of itſelf ſeems to be ſufficiently clear. It is with princes as with private perſons. The plaintiff who commences a ſuit at law, is ſometimes in the wrong, and ſometimes in the right. It is the ſame with the defendant. It is wrong to refuſe to pay a ſum which is juſtly due; and it is right to forbear paying what we do not owe.

VI. In the third place, Grotius diſtinguiſhes war into *private*, *public*, and *mix'd*. *Public war* he calls that which is made on both ſides by the authority of

of the civil power; *Private war*, that which is made between private perſons, without any public authority: and, laſtly, *mix'd war*, that which, on one ſide, is carried on by public authority, and, on the other, by private perſons.

VII. We may obſerve concerning this diviſion, that if we take the word *war* in the moſt general and extenſive ſenſe, and underſtand by it *all taking up arms with a view to decide a quarrel*, in contradiſtinction to the way of deciding a difference by recourſe to a common judge, then this diſtinction may be admitted; but cuſtom ſeems to explode it, and has reſtrained the ſignification of the word *war* to that carried on between ſovereign powers. In civil ſociety, private perſons have not a right to make war; and as for the ſtate of nature, we have already treated of the right which men have in that ſtate to defend and preſerve their perſons and properties; ſo that as we are here treating only of the right of ſovereigns, with regard to each other, it is properly public, and not private war, that falls under our preſent conſideration.

VIII. 4°. War is alſo diſtinguiſhed into *ſolemn according to the laws of nations*, and *not ſolemn*. To render a war ſolemn, two things are requiſite; the firſt, that it be made by the authority of the ſovereign; the ſecond, that it be accompanied with certain formalities, as a formal declaration, &c. but of this we ſhall treat more fully in its proper place. War not ſolemn, is that which is made either with-

out a formal declaration, or againſt mere private perſons. We ſhall here only hint at this diviſion, deferring a more particular examination of it, and an enquiry into its effects, till we come to treat of the formalities which uſually precede war.

IX. But a queſtion is moved, relating to this ſubject, which is, whether a magiſtrate, properly ſo called, and as ſuch, has a power of making war of his own accord? Grotius anſwers, that judging independently of the civil laws, every magiſtrate ſeems to have as much right, in caſe of reſiſtance, to take up arms in order to exerciſe his juriſdiction, and to ſee his commands executed, as to defend the people intruſted to his care. Puffendorf, on the contrary, takes the negative, and paſſes cenſure on the opinion of Grotius.

X. But it is eaſy to reconcile theſe two authors, the diſpute between them being merely about words. Grotius fixes a more vague and general idea to the term *war* *: according to him, therefore, when a ſubordinate magiſtrate takes up arms to maintain his authority, and to reduce thoſe to reaſon who refuſe to ſubmit to him, he is ſuppoſed to act with the approbation of the ſovereign; who, by entruſting him with a ſhare in the government of the ſtate, has at the ſame time inveſted him with the power neceſſary to exerciſe it. And thus the queſtion is only, whether every magiſtrate, as ſuch, has need, on this occaſion, of an expreſs order from the ſovereign; ſo that the conſtitution of civil ſocieties in general re-

* See above, ſect. vii.

quire

quire it, independently of the laws of each particular ſtate.

XI. Now if a magiſtrate can have recourſe to arms for the reduction of one perſon, of two, ten, or twenty, who either refuſe to obey him, or attempt to hinder the exerciſe of his juriſdiction, why may he not uſe the ſame means againſt fifty, a hundred, a thouſand? &c. The greater the number of the diſobedient, the more he will have occaſion for force to overcome their reſiſtance. Now this is what Grotius includes under the term *war*.

XII. Puffendorf agrees to this in the main; but he pretends that this coercive power, which belongs to a magiſtrate over diſobedient ſubjects, is not a right of war; war ſeeming to be intirely between equals, or at leaſt ſuch as pretend to equality. The idea of Puffendorf's is certainly more regular, and agreeable to cuſtom; but it is evident, that the difference between him and Grotius conſiſts only in the greater or leſſer extent which each of them gives to the word *war*.

XIII. If it be objected, that it is dangerous to leave ſo much power to a ſubordinate magiſtrate; this may be true: but then it proves only that the prudence of legiſlators requires they ſhould ſet bounds in this reſpect to the power of magiſtrates, in order to prevent an inconveniency which ſhould otherwiſe ariſe from the inſtitution of magiſtracy.

XIV. But

XIV. But to judge of the power of the magiſtrates, or of generals and leaders, in reſpect to war, properly ſo called, and which is carried on againſt a foreign enemy, we need only to attend to their commiſſions; for it is evident that they cannot lawfully undertake any act of hoſtility of their own head, and without a formal order of the ſovereign, at leaſt reaſonably preſumed, in conſequence of particular circumſtances.

XV. Thus, for example, a general ſent upon an expedition with an unlimited authority, may act againſt the enemy offenſively, as well as defenſively, and in ſuch a manner as he ſhall judge moſt advantageous; but he can neither levy a new war, nor make peace of his own head. But if his power be limited, he ought never to paſs the bounds preſcribed, unleſs he is unavoidably reduced to it by the neceſſity of ſelf-defence; for whatever he does in that caſe, is ſuppoſed to be with the conſent and approbation of the ſovereign. Thus, if an admiral has orders to be upon the defenſive, he may, notwithſtanding ſuch a reſtraint, break in upon the enemy's fleet, and ſink and burn as many of their ſhips as he can, if they come to attack him: all that he is forbidden, is to challenge the enemy firſt.

XVI. In general, the governors of provinces and cities, if they have troops under their command, may by their own authority defend themſelves againſt an enemy who attacks them; but they ought not to carry the war into a foreign country, without an expreſs order from their ſovereign.

XVII. It was in virtue of this privilege, arifing from neceffity, that Lucius Pinarius *, governor of Enna in Sicily for the Romans, upon certain information that the inhabitants defigned to revolt to the Carthaginians, put them all to the fword, and thus preferved the place. But, except in the like cafe of neceffity, the inhabitants of a town have no right to take up arms, in order to obtain fatisfaction for thofe injuries which the prince neglects to revenge.

XVIII. A mere prefumption of the will of the fovereign, would not even be fufficient to excufe a governor, or any other officer, who fhould undertake a war, except in cafe of neceffity, without either a general or particular order. For it is not fufficient to know what part the fovereign would probably act, if he were confulted, in fuch a particular pofture of affairs; but it fhould rather be confidered in general, what it is probable a prince would defire fhould be done without confulting him, when the matter will bear fome delay, and the affair is dubious. Now certainly fovereigns will never confent that their minifters fhould, whenever they think proper, undertake, without their order, a thing of fuch importance as an offenfive war, which is the proper fubject of the prefent inquiry.

XIX. In thefe circumftances, whatever part the fovereign would have thought proper to act, if he had been confulted; and whatever fuccefs the war, undertaken without his orders, may have had; it is left to the fovereign whether he will ratify, or con-

* Livy, lib. xxi. cap. xviii.

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demn the act of his minifter. If he ratifies it, this approbation renders the war folemn, by reflecting back, as it were, an authority upon it, fo that it obliges the whole commonwealth. But if the fovereign fhould condemn the act of the governor, the hoftilities committed by the latter ought to pafs for a fort of robbery, the fault of which by no means affects the ftate, provided the governor is delivered up, or punifhed according to the laws of the country, and proper fatisfaction be made for the damages fuftained.

XX. We may further obferve, that in civil focieties, when a particular member has done an injury to a ftranger, the governor of the commonwealth is fometimes refponfible for it, fo that war may be declared againft him on that account. But to ground this kind of imputation, we muft neceffarily fuppofe one of thefe two things, fufferance, or reception; viz. either that the fovereign has fuffered this harm to be done to the ftranger, or that he afforded a retreat to the criminal.

XXI. In the former cafe it muft be laid down as a maxim, that a fovereign, who knowing the crimes of his fubjects, as for example, that they practife piracy on ftrangers; and being alfo able and obliged to hinder it, does not hinder it, renders himfelf criminal, becaufe he has confented to the bad action, the commiffion of which he has permitted, and confequently furnifhed a juft reafon of war.

XXII. The two conditions above-mentioned, I mean the knowledge and ſufferance of the ſovereign, are abſolutely neceſſary, the one not being ſufficient without the other, to communicate any ſhare in the guilt. Now it is preſumed, that a ſovereign knows what his ſubjects openly and frequently commit; and as to his power of hindering the evil, this likewiſe is always preſumed, unleſs the want of it be clearly proved.

XXIII. The other way, in which a ſovereign renders himſelf guilty of the crime of another, is by allowing a retreat and admittance to the criminal, and ſkreening him from puniſhment. Puffendorf pretends, that if we are obliged to deliver up a criminal who takes ſhelter among us, it is rather in virtue of ſome treaty on this head, than in conſequence of a common and indiſpenſable obligation.

XXIV. But Puffendorf, I think, has, without ſufficient reaſons, abandoned the opinion of Grotius, which ſeems to be better founded. The principles of the latter, in regard to the preſent queſtion, may be reduced to theſe following.

1°. Since the eſtabliſhment of civil ſocieties, the right of puniſhing public offences, which every perſon, if not chargeable himſelf with ſuch a crime, had in the ſtate of nature, has been transferred to the ſovereign, ſo that the latter alone hath the privilege of puniſhing, as he thinks proper, thoſe tranſgreſſions of his ſubjects, which properly intereſt the public.

XXV. But

XXV. But this right of puniſhing crimes is not ſo excluſively theirs, but that either public bodies, or their governors, have a right to procure the puniſhment of them in the ſame manner, as the laws of particular countries allow private people the proſecution of crimes before the civil tribunal.

XXVI. 3°. This right is ſtill ſtronger with reſpect to crimes, by which they are directly injured, and which they have a perfect right of puniſhing, for the ſupport of their honour and ſafety. In ſuch circumſtances, the ſtate, to which the criminal retires, ought not to obſtruct the right that belongs to the other power.

XXVII. 4°. Now as one prince does not generally permit another to ſend armed men into his territories, upon the ſcore of exacting puniſhment (for this would indeed be attended with terrible inconveniencies) it is reaſonable the ſovereign, in whoſe dominions the offender lives, or has taken ſhelter, ſhould either puniſh the criminal according to his demerits, or deliver him up, to be puniſhed at the diſcretion of the injured ſovereign. This is that delivering up, of which we have ſo many examples in hiſtory.

XXVIII. 5°. The principles here laid down, concerning the obligation of puniſhing or delivering up, regard not only the criminals who have always been ſubjects of the government they now live under, but alſo thoſe who, after the commiſſion of a crime, have taken ſhelter in the country.

XXIX. 6°. In fine, we muſt obſerve that the right of demanding fugitive delinquents to puniſhment, has not for ſome ages laſt paſt been inſiſted upon by ſovereigns, in moſt parts of Europe, except in crimes againſt the ſtate, or thoſe of a very heinous nature. As to leſſer crimes, they are connived at on both ſides, unleſs it is otherwiſe agreed on by ſome particular treaty.

XXX. Beſides the kinds of war, hitherto mentioned, we may alſo diſtinguiſh them into *perfect* and *imperfect*. A perfect war, is that which entirely interrupts the tranquillity of the ſtate, and lays a foundation for all poſſible acts of hoſtility. An imperfect war, on the contrary, is that which does not intirely interrupt the peace, but only in certain particulars, the public tranquillity being in other reſpects undiſturbed.

XXXI. This laſt ſpecies of war is generally called repriſals, of the nature of which we ſhall give here ſome account. By repriſals then we mean *that imperfect kind of war, or thoſe acts of hoſtility which ſovereigns exerciſe againſt each other, or, with their conſent, their ſubjects, by ſeizing the perſons or effects of the ſubjects of a foreign commonwealth, that refuſeth to do us juſtice; with a view to obtain ſecurity, and to recover our right, and in caſe of refuſal, to do juſtice to ourſelves, without any other interruption of the public tranquillity.*

XXXII. Grotius pretends, that repriſals are not founded on the law of nature and neceſſity, but only

only on a kind of arbitrary law of nations, by which moſt of them have agreed, that the goods belonging to the ſubjects of a foreign ſtate ſhould be a pledge or ſecurity, as it were, for what that ſtate, or the governor of it, might owe us, either directly and in their own names, or by rendering themſelves reſponſible for the actions of others, upon refuſing to adminiſter juſtice.

XXXIII. But this is far from being an arbitrary right, founded upon a pretended law of nations, whoſe exiſtence we cannot prove, depending on the greater or leſs extent of cuſtom no way binding in the nature of a law. The right we here ſpeak of, is a conſequence of the conſtitution of civil ſocieties, and an application of the maxims of the law of nature to that conſtitution.

XXXIV. During the independence of the ſtate of nature, and before the inſtitution of civil government, if a perſon had been injured, he could come upon thoſe only who had done the wrong, or upon their accomplices; becauſe there was then no tie between men, in virtue of which a perſon might be deemed to have conſented, in ſome manner, to what others did even without his participation.

XXXV. But ſince civil ſocieties have been formed, that is to ſay, communities, whoſe members are all united together for their common defence, there has neceſſarily ariſen from thence a conjunction of intereſts and wills; which is the reaſon, that as the

ſociety, or the powers which govern it, engage to defend each other againſt every inſult; ſo each individual may be deemed to have engaged to anſwer for the conduct of the ſociety, of which he is a member, or of the powers which govern it.

XXXVI. No human eſtabliſhment can ſuperſede the obligation of that general and inviolable law of nature, *that the damage we have done to another ſhould be repaired*; except thoſe, who are thereby injured, have manifeſtly renounced their right of demanding reparation. And when ſuch eſtabliſhments hinder thoſe who are injured, from obtaining ſatisfaction ſo eaſily as they might without them, this difficulty muſt be made up, by furniſhing the perſons intereſted with all the other poſſible methods of doing themſelves juſtice.

XXXVII. Now it is certain that ſocieties, or the powers which govern them, by being armed with the force of the whole body, are ſometimes encouraged to laugh with impunity at ſtrangers, who come to demand their due; and that every ſubject contributes, one way or other, to enable them to act in this manner; ſo that he may be ſuppoſed in ſome meaſure to conſent to it. But if he does not in reality conſent, there is, after all, no other manner of facilitating, to injured ſtrangers, the proſecution of their rights, which is rendered difficult by the united force of the whole body, than to authoriſe them to come upon all thoſe who are members of it.

XXXVIII. Let

XXXVIII. Let us therefore conclude, that by the conftitution of civil focieties, every fubject, fo long as he continues fuch, is refponfible to ftrangers for the conduct of the fociety, or of him who governs it; with this claufe, however, that he may demand indemnification, when there is any fault or injuftice on the part of his fuperiors. But if it fhould be any man's misfortune to be difappointed of this indemnification, he muft look upon it as one of thofe inconveniencies which, in a civil ftate, the conftitution of human affairs renders almoft inevitable. If to all thefe we add the reafons alledged by Grotius, we fhall plainly fee, that there is no neceffity for fuppofing a tacit confent of the people to found the right of reprifals.

XXXIX. As reprifals are acts of hoftility, and often the prelude or forerunner of a compleat and perfect war, it is plain that none but the fovereign can lawfully ufe this right, and that the fubjects can make no reprifals but by his order and authority.

XL. Befides, it is proper that the wrong or injuftice done us, and which occafions the reprifals, fhould be clear and evident, and that the thing in difpute be of great confequence. For if the injury be dubious, or of no importance, it would be equally unjuft and dangerous to proceed to this extremity, and to expofe ourfelves to all the calamities of an open war. Neither ought we to come to reprifals, before we have tried, by the ordinary means, to obtain juftice for the injury committed. For this purpofe we muft apply to the prince, whofe fubjects

has done us the injuſtice; and if the prince takes no notice, or refuſes ſatisfaction, we may then make repriſals, in order to obtain it.

XLI. In a word, we muſt not have recourſe to repriſals, except when all the ordinary means of obtaining ſatisfaction have failed; ſo that, for inſtance, if a ſubordinate magiſtrate has refuſed us juſtice, we are not permitted to uſe repriſals before we apply to the ſovereign himſelf, who will perhaps grant us ſatisfaction. In ſuch circumſtances, we may therefore either detain the ſubjects of a foreign ſtate, if they with-hold ours; or we may ſeize their goods and effects. But whatever juſt reaſon we may have to make repriſals, we can never directly, and for that reaſon alone, put thoſe to death whom we have ſeized upon, but only ſecure them, and not uſe them ill, till we have obtained ſatisfaction; ſo that, during all that time, they are to be conſidered as hoſtages.

XLII. In regard to the goods ſeized by the right of repriſals, we muſt take care of them till the time, in which ſatisfaction ought to be made, is expired; after which we may adjudge them to the creditor, or ſell them for the payment of the debt; returning to him, from whom they were taken, the overplus, when all charges are deducted.

XLIII. We muſt alſo obſerve, that it is not permitted to uſe repriſals, except with regard to ſubjects, properly ſo called, and their effects; for as to ſtrangers, who do but paſs through a country, or

only

only come to make a ſhort ſtay in it, they have not a ſufficient connection with the ſtate, of which they are only members but for a time, and in an imperfect manner; ſo that we cannot indemnify ourſelves by them, for the loſs we have ſuſtained by any native of the country, and by the refuſal of the ſovereign to render us juſtice. We muſt farther except ambaſſadors, who are ſacred perſons, even in the height of war. But as to women, clergymen, men of letters, &c. the law of nature grants them no privilege in this caſe, if they have not otherwiſe acquired it by virtue of ſome treaty.

XLIV. Laſtly, ſome political writers diſtinguiſh thoſe wars which are carried on between two or more ſovereigns, from thoſe of the ſubjects againſt their governors. But it is plain, that when ſubjects take up arms againſt their prince, they either do it for juſt reaſons, and according to the principles eſtabliſhed in this work, or without a juſt and lawful cauſe. In the latter caſe, it is rather a revolt or inſurrection, than a war, properly ſo called. But if the ſubjects have juſt reaſon to reſiſt the ſovereign, it is ſtrictly a war; ſince, in ſuch a criſis, there are neither ſovereign nor ſubjects, all dependance and obligation having ceaſed. The two oppoſite parties are then in a ſtate of nature and equality, trying to obtain juſtice by their own proper ſtrength, which conſtitutes what we underſtand properly by the term *war*.

CHAP. IV.

Of thoſe things which ought to precede war.

I. HOWEVER juſt reaſon we may have to make war, yet as it inevitably brings along with it an incredible number of calamities, and oftentimes acts of injuſtice, it is certain that we ought not to proceed too eaſily to a dangerous extremity, which may perhaps prove fatal to the conqueror himſelf.

II. The following are the meaſures which prudence directs to be obſerved in theſe circumſtances.

1°. Suppoſing the reaſon of the war is juſt in itſelf, yet the diſpute ought to be about ſomething of great conſequence; ſince it is better even to relinquiſh part of our right, when the thing is not conſiderable, than to have recourſe to arms to defend it.

2°. We ought to have, at leaſt, a probable appearance of ſucceſs; for it would be a criminal temerity, to expoſe ourſelves to certain deſtruction, and to run into a greater, in order to avoid a leſſer evil.

3°. Laſtly, there ſhould be a real neceſſity for taking up arms; that is, we ought not to have recourſe to force, but when we can employ no milder method of recovering our right, or of defending ourſelves from the evils with which we are menaced.

III. Theſe

III. Thefe meafures are agreeable not only to the principles of prudence, but alfo to the fundamental maxims of fociability, and the love of peace; maxims of no lefs force, with refpect to nations, than individuals. By thefe a fovereign muft therefore be neceffarily directed; juftice obliges him to it, in confequence of the very nature and end of government. For as he ought to take particular care of the ftate, and of his fubjects, he fhould not expofe them to the evils with which war is attended, except in the laft extremity, and when there is no other expedient left but that of arms.

IV. It is not therefore fufficient that the war be juft in itfelf, with refpect to the enemy; it muft alfo be fo with refpect to ourfelves, and our fubjects. Plutarch informs us, "that among the ancient Ro-"mans, when the Feciales had determined that a "war might be juftly undertaken, the fenate after-"wards examined whether it would be advantage-"ous to engage in it."

V. Now among the methods of deciding differences between nations without a war, there are three moft confiderable. The firft is an amicable conference between the contending parties; with refpect to which Cicero judicioufly obferves, "that this "method of terminating a difference by a difcuffion "of reafons on both fides, is peculiarly agreeable "to the nature of man; that force belongs to "brutes, and that we never ought to have recourfe "to it, but when we cannot redrefs our grievances "by any other method."

VI. The

VI. The ſecond way of terminating a difference between thoſe who have not a common judge, is to put the matter to arbitration. The more potent indeed often neglect this method, but it ought certainly to be followed by thoſe who have any regard to juſtice and peace; and it is a way that has been taken by great princes and people.

VII. The third method, in fine, which may be ſometimes uſed with ſucceſs, is that of caſting lots. I ſay, we may ſometimes uſe this way; for it is not always lawful to refer the iſſue of a difference, or of a war, to the deciſion of lots. This method cannot be taken, except when the diſpute is about a thing, in which we have a full property, and which we may renounce whenever we pleaſe. But in general, the obligation of the ſovereign to defend the lives, the honour, and the religion of his ſubjects, as alſo his obligation to maintain the dignity of the ſtate, are of too ſtrong a nature to ſuffer him to renounce the moſt natural and moſt probable means of his own ſecurity, as well as that of the public, and to refer his caſe to chance, which in its nature is entirely precarious.

VIII. But if upon due examination he, who has been unjuſtly attacked, finds himſelf ſo weak, that he has no probability of making any conſiderable reſiſtance, he may reaſonably decide the difference by the way of lot, in order to avoid a certain, by expoſing himſelf to an uncertain danger; which, in this caſe, is the leaſt of two inevitable evils.

IX. There

IX. There is alſo another method, which has ſome relation to lots. This conſiſts in ſingle combats, which have often been uſed to terminate ſuch differences as were likely to produce a war between two nations. And indeed, to prevent a war, and its concomitant evils, I ſee no reaſon that can hinder us from referring matters to a combat between a certain number of men agreed upon by both parties. Hiſtory furniſhes us with ſeveral examples of this kind, as that of Turnus and Eneas, Menelaus and Paris, the Horatii and the Curiatii.

X. It is a queſtion of ſome importance, to know whether it be lawful thus to expoſe the intereſt of a whole ſtate to the fate of thoſe combats. It appears on the one hand, that by ſuch means we ſpare the effuſion of human blood, and abridge the calamities of war; on the other hand, it promiſeth fairer, and looks like a better venture, to ſtand the ſhock even of a bloody war, than by one blow to riſque the liberty and ſafety of the ſtate by a deciſive combat; ſince, after the loſs of one or two battles, the war may be ſet on foot again, and a third perhaps may prove ſucceſsful.

XI. However, it may be ſaid, that if otherwiſe there is no proſpect of making a good end of a war, and if the liberty and ſafety of the ſtate are at ſtake, there ſeems to be no reaſon againſt taking this ſtep, as the leaſt of two evils.

XII. Grotius, in examining this queſtion, pretends that theſe combats are not reconcileable to in-

ternal

ternal juſtice, though they are approved by the external right of nations; and that private perſons cannot innocently expoſe their lives, of their own accord, to the hazard of a ſingle combat, though ſuch a combat may be innocently permitted by the ſtate or ſovereign, to prevent greater miſchiefs. But it has been juſtly obſerved, that the arguments uſed by this great man, either prove nothing at all, or prove, at the ſame time, that it is never lawful to venture one's life in any combat whatever.

XIII. We may even affirm, that Grotius is not very conſiſtent with himſelf, ſince he permits this kind of combats, when otherwiſe there is the greateſt probability that he who proſecutes an unjuſt cauſe will be victorious, and thereby deſtroy a great number of innocent perſons: For this exception evinces that the thing is not bad in itſelf, and that all the harm, which can be in this caſe, conſiſts in expoſing our own life, or that of others, without neceſſity, to the hazard of a ſingle combat. The deſire of terminating, or preventing a war, which has always terrible conſequences, even to the victorious, is ſo commendable, that it may excuſe, if not intirely juſtify thoſe, who engage either themſelves or others even imprudently in a combat of this kind. Be this as it may, it is certain that in ſuch a caſe, thoſe who combat by the order of the ſtate, are entirely innocent; for they are no more obliged to examine whether the ſtate acts prudently or not, than when they are ſent upon an aſſault, or to fight a pitched battle.

XIV. We

XIV. We muſt however obſerve, that it was a fooliſh ſuperſtition in thoſe people who looked upon a ſet combat as a lawful method of determining all differences, even between individuals, from a perſuaſion that the Deity gave always the victory to the good cauſe; for which reaſon they called this kind of combat *the judgment of God.*

XV. But if, after having uſed all our endeavours to terminate differences in an amicable manner, there remains no further hope, and we are abſolutely conſtrained to undertake a war, we ought firſt to declare it in form.

XVI. This declaration of war conſidered in itſelf, and independently of the particular formalities of each people, does not ſimply belong to the law of nations, taking this word in the ſenſe of Grotius, but to the law of nature itſelf. Indeed prudence, and natural equity, equally require, that before we take up arms againſt any ſtate, we ſhould try all amicable methods, to avoid coming to ſuch an extremity. We ought then to ſummon him, who has injured us, to make a ſpeedy ſatisfaction, that we may ſee whether he will not have regard to himſelf, and not put us to the hard neceſſity of purſuing our right by the force of arms.

XVII. From what has been ſaid it follows, that this declaration takes place only in *offenſive wars*; for when we are actually attacked, that alone gives us reaſon to believe that the enemy is reſolved not to liſten to an accommodation.

XVIII. From thence it alſo follows, that we ought not to commit acts of hoſtility immediately upon declaring war, but ſhould wait, ſo long at leaſt as we can without doing ourſelves a prejudice, until he who has done us the injury plainly refuſes to give us ſatisfaction, and has put himſelf in a condition to receive us with bravery and reſolution; otherwiſe the declaration of war would be only a vain ceremony. For we ought to neglect no means to convince all the world, and even the enemy himſelf, that it is only abſolute neceſſity that obliges us to take up arms, for the recovery or defence of our juſt rights; after having tried every other method, and given the enemy full time to conſider.

XIX. Declarations of war are diſtinguiſhed into *conditional* and *abſolute*. The *conditional* is that which is joined with a ſolemn demand of reſtitution, and with this condition, that if the injury be not repaired, we ſhall do ourſelves juſtice by arms. The *abſolute* is that which includes no condition, and by which we abſolutely renounce the friendſhip and ſociety of him againſt whom we declare war. But every declaration of war, in whatever manner it be made, is of its own nature conditional *; for we ought always to be diſpoſed to accept of a reaſonable ſatisfaction, ſo ſoon as the enemy offers it; and on this account ſome writers reject this diſtinction of the declaration of war into conditional and abſolute. But it may nevertheleſs be maintained, by ſuppoſing that he, againſt whom war is declared purely and ſimply, has already ſhewn, that he had no deſign

* See above, numb. xviii.

to ſpare us the neceſſity of taking up arms againſt him. So far therefore the declaration may, at leaſt as to the form of it, be pure and ſimple, without any prejudice to the diſpoſition in which we ought always to be, if the enemy will hearken to reaſon: but this relates to the concluſion, rather than the commencement of a war; to the latter of which the diſtinction of conditional and abſolute declarations properly belongs.

XX. As ſoon as war has been declared againſt a ſovereign, it is preſumed to be declared at the ſame time not only againſt all his ſubjects, who, in conjunction with him, form one moral perſon; but alſo againſt all thoſe who ſhall afterwards join him, and who, with reſpect to the principal enemy, are to be looked upon only as allies, or adherents.

XXI. As to the formalities obſerved by different nations in declaring war, they are all arbitrary in themſelves. It is therefore a matter of indifference, whether the declaration be made by envoys, heralds, or letters; whether to the ſovereign in perſon, or to his ſubjects, provided the ſovereign cannot plead ignorance of it.

XXII. With reſpect to the reaſons why a ſolemn denunciation was required unto ſuch a war, as by the law of nations is called juſt; Grotius pretends it was, that the people might be aſſured that the war was not undertaken by private authority, but by the conſent of one or other of the nations, or of their ſovereigns.

XXIII. But

XXIII. But this reaſon of Grotius's ſeems to be inſufficient; for are we more aſſured that the war is made by public authority, when a herald, for inſtance, comes to declare it with certain ceremonies, than we ſhould be, when we ſee an army upon our frontiers, commanded by a principal perſon of the ſtate, and ready to enter our country? Might it not more eaſily happen, that one, or a few perſons, ſhould aſſume the character of herald, than that a ſingle man ſhould, of his own authority, raiſe an army, and march at the head of it to the frontiers, without the ſovereign's knowledge?

XXIV. The truth is, the principal end of a declaration of war, or at leaſt what has occaſioned its inſtitution, is to let all the world know that there was juſt reaſon to take up arms, and to ſignify to the enemy himſelf, that it had been, and ſtill was, in his power to avoid it. The declarations of war, and the manifeſtos publiſhed by princes, are marks of the due reſpect they have for each other, and for ſociety in general, to whom by ſuch means they give an account of their conduct, in order to obtain the public approbation. This appears particularly by the manner in which the Romans made thoſe denunciations. The perſon ſent for this purpoſe took the gods to witneſs, that the nation, againſt whom they had declared war, had acted unjuſtly, by refuſing to comply with what law and juſtice required.

XXV. Laſtly, it is to be obſerved, that we ought not to confound the *declaration* with the *publication*

of war. This laſt is made in favour of the ſubjects of the prince who declares the war, and to inform them, that they are henceforth to look upon ſuch a nation as their enemies, and to take their meaſures accordingly.

CHAP. V.

General rules to know what is allowable in war.

I. IT is not enough that a war be undertaken with juſtice, or for a lawful reaſon, and that we obſerve the other conditions hitherto mentioned; but we ought alſo, in the proſecution of it, to be directed by the principles of juſtice and humanity, and not to carry the liberties of hoſtility beyond thoſe bounds.

II. Grotius, in treating this ſubject, eſtabliſhes three general rules, as ſo many principles, which ſerve to explain the extent of the rights of war.

III. The *firſt* is, that every thing which has a connection morally neceſſary with the end of the war, is permitted, and no more. For it would be to no purpoſe to have a right to do a thing, if we could not make uſe of the neceſſary means to bring it about. But, at the ſame time, it would not be juſt, that, under a pretence of defending our right, we ſhould think every thing lawful, and pro-

ceed, without any manner of neceſſity, to the laſt extremity.

IV. The *ſecond rule.* The right we have againſt an enemy, and which we purſue by arms, ought not to be conſidered only with reſpect to the cauſe which gave riſe to the war; but alſo with reſpect to the freſh cauſes which happen afterwards, during the proſecution of hoſtilities: Juſt as in courts of law, one of the parties often acquires ſome new right before the end of the ſuit. This is the foundation of the right we have to act againſt thoſe who join our enemy, during the courſe of the war, whether they be his dependents or not.

V. The *third rule*, in fine, is, that there are a great many things, which, though otherwiſe unlawful, are yet permitted in war, becauſe they are inevitable conſequences of it, and happen contrary to our intention, otherwiſe there would never be any way of making war without injuſtice; and the moſt innocent actions would be looked upon as criminal, ſince there are but few, from which ſome evil may not accidentally ariſe, contrary to the intention of the agent.

VI. Thus, for example, in recovering our own, if juſt ſo much as is preciſely our due cannot be had, we have a right to take more, but under the obligation of returning the value of the overplus. Hence we may attack a ſhip full of pirates, though there may be women, or children, or other innocent perſons on board, who muſt needs be expoſed to the danger of

being involved in the ruin of thofe whom we may juftly deftroy.

VII. This is the extent of the right we have againft an enemy, in confequence of a ftate of war. By a ftate of war, that of fociety is abolifhed; fo that whoever declares himfelf my enemy, gives me liberty to ufe violence againft him *in infinitum*, or fo far as I pleafe; and that not only till I have repulfed the danger that threatened me, or till I have recovered, or forced from him, what he either unjuftly deprived me of, or refufed to pay me, but till I have further obliged him to give me good fecurity for the future. It is not therefore always unjuft to return a greater evil for a lefs.

VIII. But it is alfo to be obferved, that though thefe maxims are true, according to the ftrict right of war, yet the law of humanity fixes bounds to this right. That law directs us to confider, not only whether fuch or fuch acts of hoftility may, without injury, be committed againft an enemy; but alfo, whether they are worthy of a humane or generous conqueror. Thus, fo far as our own defence and future fecurity will permit, we muft moderate the evils we inflict upon an enemy, by the principles of humanity.

IX. As to the manner of acting lawfully againft an enemy, it is evident that violence and terror are the proper characteriftics of war, and the method moft commonly ufed. Yet it is alfo lawful to employ ftratagem and artifice, pro-

vided it be without treachery, or breach of promife. Thus we may deceive an enemy by falfe news, and fictitious relations, but we ought never to violate our compacts or engagements with him, as we fhall fhew more particularly hereafter.

X. By this we may judge of the right of ftratagems; neither is it to be doubted but we may innocently ufe fraud and artifice, wherever it is lawful to have recourfe to violence and force. The former means have even the advantage over the latter, in this, that they are attended with lefs mifchief, and preferve the lives of a great many innocent people.

XI. It is true, fome nations have rejected the ufe of ftratagem and deceit in war; this, however, was not becaufe they thought them unjuft, but from a certain magnanimity, and often from a confidence in their own ftrength. The Romans, till very near the end of the fecond *Punic war*, thought it a point of honour to ufe no ftratagem againft their enemies.

XII. Thefe are the principles by which we may judge to what degree the laws of hoftility may be carried. To which let us add, that moft nations have fixed no bounds to the rights which the law of nature gives us to act againft an enemy: and the truth is, it is very difficult to determine, precifely, how far it is proper to extend acts of hoftility even in the moft legitimate wars, in defence of our perfons, or for the reparation of damages, or for obtaining caution for the future; efpecially as thofe, who engage in war, give each other, by a kind of tacit agree-

agreement, an entire liberty to moderate or augment the violence of arms, and to exercise all acts of hostility, as each shall think proper.

XIII. And here it is to be observed, that though generals usually punish their soldiers, who have carried acts of hostility beyond the orders prescribed; yet this is not because they suppose the enemy is injured, but because it is necessary the general's orders should be obeyed, and that military discipline should be strictly observed.

XIV. It is also, in consequence of these principles, that those who, in a just and solemn war, have pushed slaughter and plunder beyond what the law of nature permits, are not generally looked upon as murderers or robbers, nor punished as such. The custom of nations is to leave this point to the conscience of the persons engaged in war, rather than involve themselves in troublesome broils, by taking upon them to condemn either party.

XV. It may be even said, that this custom of nations is founded on the principles of the law of nature. Let us suppose, that in the independance of the state of nature, thirty heads of families, inhabitants of the same country, should have entered into a league to attack or repulse a body, composed of other heads of families: I say, that neither during that war, nor after it is finished, those of the same country, or elsewhere, who had not joined the league of either side, ought, or could punish,

as murderers or robbers, any of the two parties who ſhould happen to fall into their hands.

XVI. They could not do it during the war; for that would be eſpouſing the quarrel of one of the parties; and ſince they continued neuter in the beginning, they had clearly renounced the right of interfering with what ſhould paſs in the war: much leſs could they intermeddle after the war is over; becauſe, as it could not be ended without ſome accommodation or treaty of peace, the parties concerned were reciprocally diſcharged from all the evils they had done to each other.

XVII. The good of ſociety alſo requires that we ſhould follow theſe maxims. For if thoſe, who continued neuter, had ſtill been authoriſed to take cognizance of the acts of hoſtility, exerciſed in a foreign war, and conſequently to puniſh ſuch as they believed to have committed any injuſtice, and to take up arms on that account; inſtead of one war, ſeveral might have ariſen, and proved a ſource of broils and troubles. The more wars became frequent, the more neceſſary it was, for the tranquillity of mankind, not to eſpouſe raſhly other people's quarrels. The eſtabliſhment of civil ſocieties only rendered the practice of thoſe rules more neceſſary; becauſe acts of hoſtility then became, if not more frequent, at leaſt more extenſive, and attended with a greater number of evils.

XVIII. Laſtly, it is to be obſerved, that all acts of hoſti-

hoſtility, which can be lawfully committed againſt an enemy, may be exerciſed either in his territories, or ours, in places ſubject to no juriſdiction, or at ſea.

XIX. This does not hold good in a neutral country; that is to ſay, whoſe ſovereign has taken no ſhare in the war. In ſuch countries, we cannot lawfully exerciſe any acts of hoſtility; neither on the perſons of the enemy, nor on their effects; not in virtue of any right of the enemy themſelves, but from a juſt reſpect to the ſovereign, who having taken neither ſide, lays us under a neceſſity of reſpecting his juriſdiction, and of forbearing to commit any acts of violence in his territories. To this we may add, that the ſovereign, by continuing neuter, has tacitly engaged not to ſuffer either party to commit any hoſtilities within his dominions.

CHAP. VI.

Of the rights which war gives over the perſons of the enemy, and of their extent and bounds.

I. WE ſhall now enter into the particulars of the different rights which war gives over the enemy's perſon and goods; and to begin with the former.

1°. It is certain that we may lawfully kill an enemy; I ſay lawfully, not only according to the terms of external juſtice, which paſſes for ſuch among all

nations, but alſo according to internal juſtice, and the laws of conſcience. Indeed the end of war neceſſarily requires that we ſhould have this power, otherwiſe it would be in vain to take up arms, and the law of nature would permit it to no purpoſe.

II. If we conſulted only the cuſtom of countries, and what Grotius calls the *law of nations*, this liberty of killing an enemy would extend very far; we might ſay that it had no bounds, and might even be exerciſed on innocent perſons. However, though it be certain that war is attended with numberleſs evils, which in themſelves are acts of injuſtice, and real cruelty, but, under particular circumſtances, ought rather to be conſidered as unavoidable miſfortunes; it is nevertheleſs true, that the right which war gives over the perſon and life of an enemy has its bounds, and that there are meaſures to be obſerved, which cannot be innocently neglected.

III. In general, we ought always to be directed by the principles eſtabliſhed in the preceding chapter, in judging of the degrees to which the liberties of war may be carried. The power we have of taking away the life of an enemy, is not therefore unlimited; for if we can attain the legitimate end of war, that is, if we can defend our lives and properties, aſſert our rights, and recover ſatisfaction for damages ſuſtained, and good ſureties for the future, without taking away the life of the enemy, it is certain that juſtice and humanity directs us to forbear it, and not to ſhed human blood unneceſſarily.

IV. It

IV. It is true, in the application of thefe rules to particular cafes, it is fometimes very difficult, not to fay impoffible, to fix precifely their proper extent and bounds; but it is certain, at leaft, that we ought to come as near to them as poffible, without prejudicing our real interefts. Let us apply thefe principles to particular cafes.

V. 1°. It is often difputed, whether the right of killing an enemy regards only thofe who are actually in arms; or whether it extends indifferently to all thofe in the enemy's country, fubjects or foreigners? My anfwer is, that with refpect to thofe who are fubjects, the point is incontestable. Thefe are the principal enemies, and we may exercife all acts of hoftility againft them, by virtue of the ftate of war.

VI. As to ftrangers, thofe who fettle in the enemy's country after a war is begun, of which they had previous notice, may juftly be looked upon as enemies, and treated as fuch. But in regard to fuch as went thither before the war, juftice and humanity require that we fhould give them a reafonable time to retire; and if they neglect that opportunity, they are accounted enemies.

VII. 2°. With regard to old men, women and children, it is certain that the right of war does not, of itfelf, require that we fhould pufh hoftilities fo far as to kill them; it is therefore a barbarous cruelty to do fo. I fay, that the end of war does not require this of itfelf; but if women, for inftance, exercife acts

acts of hostility; if, forgetting the weakness of their sex, they usurp the offices of men, and take up arms against us, then we are certainly excused in availing ourselves of the rights of war against them. It may also be said, that when the heat of action hurries the soldiers, as it were in spite of themselves and against the order of their superiors, to commit those acts of inhumanity; for example, at the siege of a town, which, by an obstinate resistance, has irritated the troops; we ought to look upon those evils rather as misfortunes, and the unavoidable consequences of war, than as crimes that deserve to be punished.

VIII. 3°. We must reason almost in the same manner, with respect t prisoners of war. We cannot, generally speaking, put them to death, without being guilty of cruelty. I say generally speaking; for there may be cases of necessity so pressing, that the care of our own preservation obliges us to proceed to extremities, which in any other circumstances would be absolutely criminal.

IX. In general, even the laws of war require that we should abstain from slaughter as much as possible, and not shed human blood without necessity. We ought not, therefore, directly and deliberately to kill prisoners of war, nor those who ask quarter, or surrender themselves, much less old men, women and children; in general, we should spare all those whose age and profession render them unfit to carry arms, and who have no other share in the war, than their being in the enemy's country. It is easy

eaſy alſo to conceive, that the rights of war do not extend ſo far, as to authoriſe the outrages committed upon the honour and chaſtity of women; for this contributes nothing either to our defence or ſafety, or to the ſupport of our rights, but only ſerves to ſatisfy the brutality of the ſoldiers *.

X. Again, a queſtion is here ſtarted, whether in caſes, where it is lawful to kill the enemy, we may not, for that purpoſe, uſe all kinds of means indifferently? I anſwer, that to conſider the thing in itſelf, and in an abſtract manner, it is no matter which way we kill an enemy, whether by open force, or by fraud and ſtratagem; by the ſword, or by poiſon.

XI. It is however certain, that, according to the idea and cuſtom of civilized nations, it is looked upon as a baſe act of cowardice, not only to cauſe any poiſonous draught to be given to the enemy, but alſo to poiſon wells, fountains, ſprings, rivers, arrows, darts, bullets, or other weapons uſed againſt him. Now it is ſufficient, that this cuſtom of looking on the uſe of poiſon as criminal, is received among the nations at variance with us, to ſuppoſe we comply with it, when, in the beginning of the war, we do not declare that we are at liberty to act otherwiſe, and leave it to our enemy's option to do the ſame.

XII. We may ſo much the more ſuppoſe this tacit agreement, as humanity, and the intereſt of

* Grotius, lib. iii. cap. iv. § 19.

both

both parties equally require it; eſpecially ſince wars are become ſo frequent, and are often undertaken on ſuch ſlight occaſions; and ſince the human mind, ingenious in inventing the means to hurt, has ſo greatly multiplied thoſe which are authoriſed by cuſtom, and looked upon as honeſt. Beſides, it is beyond all doubt, that when we can obtain the ſame end by milder and more humane meaſures, which preſerve the lives of many, and particularly of thoſe in whoſe preſervation human ſociety is intereſted, humanity directs that we ſhould take this courſe.

XIII. Theſe are therefore juſt precautions, which men ought to follow for their own advantage. It is for the common benefit of mankind, that dangers ſhould not be augmented without end. In particular, the public is intereſted in the preſervation of the lives of kings, generals of armies, and other perſons of the firſt rank, on whoſe ſafety that of ſocieties generally depends. For if the lives of theſe perſons are in greater ſafety than thoſe of others, when attacked only by arms; they are, on the other hand, more in danger of poiſon, &c. and they would be every day expoſed to periſh in this manner, if they were not protected by a regard to ſome ſort of law, or eſtabliſhed cuſtom.

XIV. Let us add, in fine, that all nations that ever pretended to juſtice and generoſity, have followed theſe maxims. The Roman conſuls, in a letter they wrote to Pyrrhus, informing him that one of his people had offered to poiſon him, ſaid, that

that it was the intereſt of all nations not to ſet ſuch examples.

XV. It is likewiſe diſputed, whether we may lawfully ſend a perſon to aſſaſſinate an enemy? I anſwer, 1°. that he who for this purpoſe employs only ſome of his own people, may do it juſtly. When it is lawful to kill an enemy, it is no matter whether thoſe employed are many or few in number. Six hundred Lacedæmonians, with Leonidas, entered the enemy's camp, and went directly to the Perſian king (Xerxes's) pavilion; and a ſmaller number might certainly have done the ſame. The famous attempt of Mucius Scevola is commended by all antiquity; and Porſenna himſelf, whoſe life was aimed at, acknowledged this to be an act of great valour.

XVI. But it is not ſo eaſy to determine whether we may for this purpoſe employ aſſaſſins, who by undertaking this taſk muſt be guilty of falſhood and treaſon; ſuch as ſubjects with regard to their ſovereign, and ſoldiers to their general. In this reſpect there are, in my opinion, two points to be diſtinguiſhed. Firſt, whether we do any wrong, even to the enemy himſelf, againſt whom we employ traitors; and ſecondly, whether ſuppoſing we do him no wrong, we commit nevertheleſs a bad action.

XVII. 3°. With regard to the firſt queſtion, to conſider the thing in itſelf, and according to the rigorous law of war; it ſeems, that, admitting the war to be juſt, no wrong is done to the enemy, whether

whether we take advantage of the opportunity of a traitor, who freely offers himſelf, or whether we ſeek for it, and bring it about ourſelves.

XVIII. The ſtate of war, into which the enemy has put himſelf, and which it was in his own power to prevent, permits of itſelf every method that can be uſed againſt him; ſo that he has no reaſon to complain, whatever we do. Beſides, we are no more obliged, ſtrictly ſpeaking, to reſpect the right he has over his ſubjects, and the fidelity they owe him as ſuch, than their lives and fortunes, of which we may certainly deprive them by the right of war.

XIX. 4°. And yet I believe that this is not ſufficient to render an aſſaſſination, under ſuch circumſtances, entirely innocent. A ſovereign, who has the leaſt tenderneſs of conſcience, and is convinced of the juſtice of his cauſe, will not endeavour to find out perfidious methods to ſubdue his enemy, nor be ſo ready to embrace thoſe which may preſent themſelves to him. The juſt confidence he has in the protection of heaven, the horror he conceives at the traitor's perfidy, the dread of becoming his accomplice, and of ſetting an example, which may fall again on himſelf and others, will make him deſpiſe and reject all the advantage he might propoſe to himſelf from ſuch means.

XX. 5°. Let us alſo add, that ſuch means cannot always be looked upon as entirely innocent, even with reſpect to the perſon who employs the aſſaſſin. The ſtate of hoſtility, which ſuperſedes

the intercourſe of good offices, and authoriſes to hurt, does not therefore diſſolve all ties of humanity, nor remove our obligation to avoid, as much as poſſible, the giving room for ſome bad actions of the enemy, or his people; eſpecially thoſe, who of themſelves have had no part in the occaſion of the war. Now every traitor certainly commits an action equally ſhameful and criminal.

XXI. 6°. We muſt therefore conclude with Grotius, that we can never in conſcience ſeduce, or ſollicit the ſubjects of an enemy to commit treaſon, becauſe that is poſitively and directly inducing them to perpetrate a heinous crime, which otherwiſe would, in all probability, have been very remote from their thoughts.

XXII. 7°. It is quite another thing, when we only take advantage of the occaſion and the diſpoſitions we find in a perſon, who has had no need to be ſolicited to commit treaſon. Here, I think, the infamy of the perfidy does not fall on him who finds it intirely formed in the heart of the traitor; eſpecially if we conſider, that, in this caſe between enemies, the thing, with reſpect to which we take advantage of the bad diſpoſition of another, is of ſuch a nature, that we may innocently and lawfully do it ourſelves.

XXIII. 8°. Be that as it may, for the reaſons above alledged, we ought not to take advantage of a treaſon which offered itſelf, except in an extraordinary caſe, and from a kind of neceſſity. And though the

cuſtom

custom of ſeveral nations has nothing obligatory in itſelf, yet as the people, with whom we are at variance, look upon the very acceptance of a certain kind of perfidy to be unlawful, as that of aſſaſſinating one's prince or general, we are reaſonably ſuppoſed to comply with it by a tacit conſent.

XXIV. 9°. Let us obſerve, however, that the law of nations allows ſome difference between a fair and legitimate enemy, and rebels, pirates, or highwaymen. The moſt religious princes make no difficulty to propoſe even rewards to thoſe who will betray ſuch perſons; and the public odium of all, which men of this ſtamp lie under, is the cauſe that nobody thinks the meaſure hard, or blames the conduct of the prince in uſing every method to deſtroy them.

XXV. Laſtly, it is permitted to kill an enemy wherever we find him, except in a neutral country; for violent means are not ſuffered in a civiliſed ſociety, where we ought to implore the aſſiſtance of the magiſtrate. In the time of the ſecond *Punic war* *, ſeven Carthaginian galleys rode in a harbour belonging to Syphax, who was then in peace both with the Romans and Carthaginians, and Scipio came that way with two galleys only. The Carthaginians immediately prepared to attack the Roman galleys, which they might eaſily have taken before they had entered the port; but being forced by a ſtrong wind into the harbour, before the Carthaginians had time to weigh anchor,

* Livy, lib. xxviii. cap. xvii. numb. 12, & ſeq.

anchor, they durſt not attack them, becauſe it was in a neutral prince's haven.

XXVI. Here it may be proper to ſay ſomething concerning priſoners of war. In former times, it was a cuſtom almoſt univerſally eſtabliſhed, that thoſe who were made priſoners in a juſt and ſolemn war, whether they had ſurrendered themſelves, or been taken by main force, became ſlaves, the moment they were conducted into ſome place dependent on the conqueror. And this right was exerciſed on all perſons whatſoever, even on thoſe who happened unfortunately to be in the enemy's country, at the time the war ſuddenly broke out.

XXVII. Further, not only the priſoners themſelves, but their poſterity, were reduced to the ſame condition; that is to ſay, thoſe born of a woman after ſhe had been made a ſlave.

XXVIII. The effects of ſuch a ſlavery had no bounds; every thing was permitted to a maſter with reſpect to his ſlave, he had the power of life and death over him, and all that the ſlave poſſeſſed, or could afterwards acquire, belonged of right to the maſter.

XXIX. There is ſome probability, that the reaſon and end for which nations had eſtabliſhed this cuſtom of making ſlaves in war, was principally to induce the captors to abſtain from ſlaughter, from a view of the advantages they reaped from their ſlaves. Thus hiſtorians obſerve, that civil wars were

more cruel than others, the general practice in that case being to put the prisoners to the sword, because they could not make slaves of them.

XXX. But Christian nations have generally agreed among themselves, to abolish the custom of making their prisoners yield perpetual service to the conqueror. At present it is thought sufficient to keep those that are taken in war, till their ransom is paid, the estimation of which depends on the will of the conqueror, unless there be a cartel, or agreement, by which it is fixed.

CHAP. VII.

Of the rights of war over the goods of an enemy.

I. AS to the goods of an enemy, it is certain that the state of war permits us to carry them off, to ravage, to spoil, or even intirely to destroy them; for, as Cicero very well observes, * *It is not contrary to the law of nature, to plunder a person whom we may lawfully kill:* and all those mischiefs, which the law of nations allows us to do to the enemy, by ravaging and wasting his lands and goods, are called spoil or plunder.

II. This right of spoil, or plunder, extends in general to all things belonging to the enemy; and the law of nations, properly so called, does not exempt even sacred things; that is, things consecrated

* Cic. de Off. lib. iii. cap. vi.

either

either to the true God, or to falſe deities, and deſigned for the uſe of religion.

III. It is true, the practices and cuſtoms of nations do not agree in this reſpect; ſome having permitted the plunder of things ſacred and religious, and others having looked upon it as a profanation. But whatever the cuſtoms of different people may be, they can never conſtitute the primitive rule of right. In order, therefore, to be aſſured of the right of war in regard to this article, we muſt have recourſe to the law of nature and nations.

IV. I obſerve then, that things ſacred are not in themſelves different from thoſe we call profane. The former differ from the latter, only by the religious uſe to which they were intended. But this application or uſe does not inveſt the things with the quality of holy and ſacred, as an intrinſic and indelible character.

V. The things thus conſecrated ſtill belong either to the ſtate, or to the ſovereign; and there is no reaſon why the prince, who has devoted them to religious purpoſes, may not afterwards apply them to the uſes of life; for they, as well as all other public matters, are at his diſpoſal.

VI. It is therefore a groſs ſuperſtition to believe, that by the conſecration, or deſtination of thoſe things to the ſervice of God, they change maſter, and belong no more to men, but are entirely with-

drawn from human commerce, and the property of them is transferred to God. This is a dangerous ſuperſtition, owing to the ambition of the clergy.

VII. We muſt therefore conſider ſacred things as public goods, which belong to the ſtate or ſovereign. All the liberty which the right of war gives over the goods belonging to the ſtate, it alſo gives with reſpect to things called ſacred. They may therefore be ſpoiled or waſted by the enemy, at leaſt ſo far as is neceſſary and conducive to the deſign of the war; a limitation not at all peculiar to the plunder of ſacred or religious things.

VIII. For, in general, it certainly is not lawful to plunder for plunder's ſake, but it is juſt and innocent only, when it bears ſome relation to the deſign of the war; that is, when an advantage directly accrues from it to ourſelves, by appropriating thoſe goods, or at leaſt, when by ravaging and deſtroying them, we in ſome meaſure weaken the enemy. It would be a madneſs, equally brutal and criminal, to do evil to another without a proſpect of procuring ſome good, either directly or indirectly, to ourſelves. It very ſeldom happens, for inſtance, that after the taking of towns, there is any neceſſity, for ruining temples, ſtatues, or other public or private ſtructures: we ſhould therefore generally ſpare all theſe, as well as the tombs and ſepulchres.

IX. It may however be obſerved, with reſpect to things ſacred, that they who believe they contain

contain something divine, and inviolable, are really in the wrong to meddle with them at all; but this is only, because they would then act against their conscience. And here, by the way, we may take notice of a reason given to clear the Pagans of the imputation of sacrilege, even when they pillaged the temples of the gods, whom they acknowledged as such; which is, they imagined that when a city was taken, the guardian deities of that place quitted, at the same time, their temples and altars, especially after those deities, with every thing else that was sacred, had been *invited out* with certain ceremonies. This is excellently described by Cocceius, in his dissertation *De Evocatione Sacrorum.*

X. The learned Grotius furnishes us with wise reflections on this subject, to persuade generals to behave with moderation in regard to plunder, from the advantages which may accrue to themselves from such a conduct. And first he says, "by these means "we take from the enemy one of the most powerful "weapons, despair. Besides, by sparing the enemy's country, we give room to believe that we "are pretty confident of victory: and clemency is "of itself proper to soften and engage the minds of "men. All which may be proved by several illustrious examples."

XI. Besides the power which war gives to spoil and destroy the goods of an enemy, it likewise confers a right of acquiring, appropriating, and justly retaining the goods we have taken from him, till the sum due to us is paid, including the expences

of the war, in which his refuſal of payment engaged us; and whatever elſe we think neceſſary to ſecure to ourſelves, by way of caution, from the enemy.

XII. By the law of nations, not only he that makes war for a juſt reaſon, but alſo every man, in a juſt war, acquires a property in what he takes from the enemy, and that without rule or meaſure, at leaſt as to the external effects, with which the right of property is accompanied: that is to ſay, neutral nations ought to regard the two parties at war, as lawful proprietors of what they can take from each other by force of arms; the ſtate of neutrality not permitting them to eſpouſe either ſide, or to treat either of the contending powers as an uſurper, purſuant to the principles already eſtabliſhed.

XIII. This is generally true, as well with reſpect to moveables as immoveables, ſo long as they are in the poſſeſſion of him who has acquired them by the right of war. But if from the hands of the conqueror they have paſſed into the power of a third, there is no reaſon, if they are immoveables, why the ancient owner ſhould not try to recover them from that third, who holds them of the enemy, by what title ſoever; for he has as good a right againſt the new poſſeſſor, as againſt the enemy himſelf.

XIV. I ſaid, *if they are immoveables*; for with reſpect to moveable effects, as they may eaſily be transferred by commerce into the hands of the ſubjects of a neutral ſtate, often without their know-

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ing that they were taken in war; the tranquillity of nations, the good of commerce, and even the ſtate of neutrality, require that they ſhould ever be reputed lawful prize, and the property of the perſon of whom we hold them. But the caſe is otherwiſe with reſpect to immoveables, they are ſuch in their own nature; and thoſe to whom a ſtate, which has taken them from an enemy, would reſign them, cannot be ignorant of the manner in which it poſſeſſes them.

XV. Here a queſtion ariſes, when is it that things are ſaid to be taken by the right of war, and juſtly deemed to belong to him who is in poſſeſſion of them? Grotius anſwers as a civilian, that a man is deemed to have taken moveable things by the right of war, ſo ſoon as they are ſecured from the purſuit of the enemy; or when he has made himſelf maſter of them in ſuch a manner, that the firſt owner has loſt all probable hopes of recovering them. Thus, ſays he, at ſea, ſhips and other things are not ſaid to be taken, till they are brought into ſome port or harbour belonging to us, or to ſome part of the ſea where our fleet rides; for it is only then that the enemy begins to deſpair of recovering his property.

XVI. But, in my opinion, this manner of anſwering the queſtion is altogether arbitrary. I ſee no reaſon why the prizes, taken from the enemy, ſhould not become our property ſo ſoon as they are taken. For when two nations are at war, both of them have all the requiſites for the acquiſition

of property, at the very moment they take a prize. They have an intention to acquire a title of just property, namely, the right of war; and they are actually in possession of the thing. But if the principle, which Grotius supposes, were to be allowed, and the prizes taken from the enemy were not deemed a lawful acquisition, till they are transported to a place of safety, it would follow, that the booty which a small number of soldiers has taken in war, may be retaken from them by a stronger body of troops of the same party, as still belonging to the enemy, if this stronger body of troops has attacked the other before they had conveyed their booty to a place of safety.

XVII. The latter circumstance is therefore altogether indifferent, with respect to the present question. The greater or lesser difficulty the enemy may find, in recovering what has been taken from him, does not hinder the capture from actually belonging to the conqueror. Every enemy, as such, and so long as he continues such, retains the will to recover what the other has taken from him; and his present inability only reduces him to the necessity of waiting for a more favourable opportunity, which he still seeks and desires. Hence, with respect to him, the thing ought no more to be deemed taken, when in a place of safety, than when he is still in a condition of pursuing it. All that can be said, is, that in the latter case, the possession of the conqueror is not so secure as in the former. The truth is, this distinction has been invented only to establish the

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rules of the right of poſtliminy, or the manner in which the ſubjects of the ſtate, from whom ſomething has been taken in war, re-enter upon their rights; rather than to determine the time of the acquiſition of things taken by one enemy from another.

XVIII. This ſeems to be the determination of the law of nature in regard to this point. Grotius obſerves alſo, that by the cuſtoms eſtabliſhed in his time, it is ſufficient that the prize has been twenty-four hours in the enemy's poſſeſſion, to account it loſt. Thuanus, in the year 1595, gives us an example, that this cuſtom was obſerved alſo by land. The town of Liere in Brabant having been taken and retaken the ſame day, the plunder was returned to the inhabitants, becauſe it had not been twenty-four hours in the hands of the enemy. But this rule was afterwards changed, with reſpect to the United Provinces; and in general we may obſerve, that every ſovereign has a right to eſtabliſh ſuch rules, in regard to this point, as he thinks proper, and to make what agreement he pleaſes with other powers. There have been ſeveral made, at different times, between the Dutch and Spaniards, the Portugueze and the northern ſtates.

XIX. Grotius applies theſe principles alſo to lands; they are not to be reputed loſt ſo ſoon as they are ſeized on; but for this effect they are to be ſo ſecured with fortifications, that, without being forced, they cannot be repoſſeſſed by the firſt

owner. But to this caſe we may alſo apply the reflections already made. A territory belongs to an enemy as ſoon as he is maſter of it, and ſo long as he continues in poſſeſſion of it. The greater, or leſſer precautions to ſecure it, are nothing to the purpoſe.

XX. But be this as it may, it is to be obſerved, that during the whole time of the war, the right we acquire over the things we have taken from the enemy, is of force only with reſpect to a third diſintereſted party; for the enemy himſelf may retake what he has loſt, whenever he finds an opportunity, till by a treaty of peace he has renounced all his pretenſions.

XXI. It is alſo certain, that in order to appropriate a thing by the right of war, it muſt belong to the enemy; for things belonging to people who are neither his ſubjects, nor animated with the ſame ſpirit as he againſt us, cannot be taken by the right of war, even though they are found in the enemy's country. But if neutral ſtrangers furniſh our enemy with any thing, and that with a deſign to put him into a condition of hurting us, they may be looked upon as taking part with our foe, and their effects may conſequently be taken by the right of war.

XXII. It is however to be obſerved, that in dubious caſes it is always to be preſumed, that what we find in the enemy's country, or in their ſhips, is deemed to belong to them; for beſides that this pre-

presumption is very natural, were the contrary maxim to take place, it would lay a foundation for an infinite number of frauds. But this presumption, however reasonable in itself, may be destroyed by contrary proofs.

XXIII. Neither do the ships of friends become lawful prizes, though some of the enemy's effects are found in them, unless it is done by the consent of the owners; who by that step seem to violate the neutrality, or friendship, and give us a just right to treat them as an enemy.

XXIV. But in general we must observe, with respect to all these questions, that prudence and good policy require, that sovereigns should come to some agreement among themselves, in order to avoid the disputes which may arise from those different cases.

XXV. Let us also take notice of a consequence of the principles here established; which is, that when we have taken things from the enemy, of which he himself had stripped another by the right of war, the former possessor cannot claim them.

XXVI. Another question is, whether things, taken in a public and solemn war, belong to the state, or to the individuals who are members of it, or to those who made the first seizure? I answer, that as the right of war is lodged in the sovereign alone, and undertaken by his authority, every thing taken is originally and primarily

marily acquired to him, whatever hands it firſt falls into.

XXVII. However, as the war is burdenſome to the ſubjects, both equity and humanity require that the ſovereign ſhould make them partake of the advantages which may accrue from it. This may be done, either by aſſigning to thoſe who take the field a certain pay from the public, or by ſharing the booty among them. As to foreign troops, the prince is obliged to give them no more than their pay; what he allows them above that, is pure liberality.

XXVIII. Grotius, who examines this queſtion at large, diſtinguiſhes between acts of hoſtility truly public, and private acts that are done upon the occaſion of a public war. By the latter, according to him, private perſons acquire to themſelves principally, and directly, what they take from the enemy; whereas, by the former, every thing taken belongs to the whole body of the people, or to the ſovereign. But this deciſion has been juſtly criticiſed. As all public war is made by the authority of the people, or of their chief, it is from this ſource we muſt originally derive whatever right individuals may have to things taken in war. In this caſe there muſt always be an expreſs or tacit conſent of the ſovereign.

XXIX. It is alſo to be obſerved, that in treating this point Grotius has confounded different things. The queſtion does not relate to the law of nations, properly

properly ſo called; for in whatever manner that law is underſtood, and whatever it be founded on, it ought to relate to the affairs in diſpute between two different ſtates. Now whether the booty belongs to the ſovereign who makes war, or to the generals, or to the ſoldiers, or to other perſons, that is nothing to the enemy, nor to other ſtates. If what is taken be a good prize, it is of ſmall conſequence to the enemy in whoſe hands it remains. With regard to neutral people, it is ſufficient that ſuch of them as have purchaſed, or any other way acquired a moveable thing taken in war, cannot be moleſted, or proſecuted upon that account. The truth is, the regulations and cuſtoms, relating to this ſubject, are not of public right; and their conformity, in many countries, implies no more than a civil right, common to ſeveral nations ſeparately.

XXX. As for what in particular relates to the acquiſition of *incorporeal things* by the right of war, it is to be obſerved, that they do not become our property, except we are in poſſeſſion of the ſubject in which they inhere. Now the ſubjects they inhere in, are either things or perſons. We often annex, for inſtance, to certain lands, rivers, ports and towns, particular rights, which always follow them, whatever poſſeſſors they come to; or rather, thoſe who poſſeſs them, are thereby inveſted with certain rights over other things and perſons.

XXXI. The rights which belong directly and immediately to perſons, regard either other perſons, or only certain things. Thoſe which are annexed to perſons

perſons over other perſons, are not obtained but with the conſent of the perſons themſelves; who are ſuppoſed not to have given a power over them to any man promiſcuouſly, but to ſome certain perſon. Thus, for inſtance, though a king happens to be made priſoner of war, his enemies have not therefore acquired his kingdom with him.

XXXII. But with reſpect to perſonal rights over things, the bare ſeizure of the perſon of the enemy, is not a ſufficient title to the property of all his effects, unleſs we really take poſſeſſion of thoſe effects at the ſame time. This may be illuſtrated by the example given by Grotius and Puffendorf: Alexander the Great having deſtroyed the city of Thebes, made a preſent to the Theſſalians of an inſtrument, in which the latter acknowledged that they owed the Thebans a hundred talents.

XXXIII. Theſe are the rights which war gives us over the effects of the enemy. But Grotius pretends, that the right by which we acquire things taken in war, is ſo proper and peculiar to a ſolemn war, declared in form, that it has no force in others, as in civil wars, &c. and that in the latter, in particular, there is no change of property, but in virtue of the ſentence of a judge.

XXXIV. We may obſerve, however, upon this point, that in moſt civil wars no common judge is acknowledged. If the ſtate is monarchical, the diſpute turns either upon the ſucceſſion to the crown, or upon a conſiderable part of the ſtate's pretend-

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ing that the king has abuſed his power, a manner which authoriſes the ſubject to take up arms againſt him.

XXXV. In the former caſe, the very nature of the cauſe, for which the war is undertaken, occaſions the two parties of the ſtate to form, as it were, two diſtinct bodies, till they come to agree upon a chief by ſome treaty. Hence, with reſpect to the two parties which were at war, it is on ſuch a treaty that the right depends, which perſons may have to that which has been taken on either ſide; and nothing hinders, but this right may be left on the ſame footing, and admitted to take place in the ſame manner, as in public wars between two ſtates always diſtinct.

XXXVI. As to other nations, who were not concerned in the war, they have no more authority to examine the validity of the acquiſitions, than they have to be judges of a war made between two different ſtates.

XXXVII. The other caſe, I mean an inſurrection of a conſiderable part of the ſtate againſt the reigning prince, can rarely happen, except when that prince has given room for it, either by tyranny, or by the violation of the fundamental laws of the kingdom. Thus the government is then diſſolved, and the ſtate is actually divided into two diſtinct and independent bodies; ſo that we are to form here the ſame judgment as in the former caſe.

XXXVIII. For

XXX . For much ſtronger reaſons does take place in the civil wars of a republican ſta in which the war, immediately of itſelf, deſtro the ſovereignty, which ſubſiſts ſolely in the unio of its members.

XXXIX. Grotius ſeems to have derived his ideas on this ſubject from the Roman laws; for theſe decreed, that priſoners taken in a civil war could not be reduced to ſlavery. This was, as Ulpian the civilian * remarks, becauſe they looked upon a civil war not properly as a war, but as a *civil diſſenſion*; for, adds he, a real war is made between thoſe who are enemies, and animated with a hoſtile ſpirit, which prompts them to endeavour the ruin of each other's ſtate. Whereas, in a civil war, however hurtful it often proves to the nation, the one party wants to ſave itſelf in one manner, and the other in another. Thus they are not enemies, and every perſon of the two parties remains always a citizen of the ſtate ſo divided.

XL. But all this is a ſuppoſition, or *fiction of right*, which does not hinder what I have been ſaying from being true, and from taking place in general. And if, among the Romans, a perſon could not appropriate to himſelf the priſoners taken in a civil war, as real ſlaves, this was in virtue of a particular law received among them, and not on account of any defect of the conditions, or formalities, which, according to Grotius, are required by the law of nations, in a public or ſolemn war.

* Lib. xxi. ſect. 1. ff. de capt. & reverſ.

XLI. Laſtly,

XLI. Laſtly, as to the wars of robbers and pirates, if they do not produce the effects above-mentioned, nor give to thoſe pirates a right of appropriating what they have taken, it is becauſe they are robbers, and enemies to mankind, and conſequently perſons whoſe acts of violence are manifeſtly unjuſt, which authoriſes all nations to treat them as enemies. Whereas, in other kinds of war, it is often difficult to judge on which ſide the right lies; ſo that the diſpute continues, and ought to continue, undecided, with reſpect to thoſe who are unconcerned in the war.

CHAP. VIII.

Of the right of ſovereignty acquired over the conquered.

I. BESIDES the effects of war, hitherto mentioned, there remains one more, the moſt important of all, and which we ſhall here conſider; I mean the right of ſovereignty acquired over the conquered. We have already remarked, when explaining the different ways of obtaining the ſupreme power, that in general it may be acquired either in a violent manner, and by the right of conqueſt, &c.

II. We muſt however obſerve, that war or conqueſt, conſidered in itſelf, is not properly the cauſe of this acquiſition; that is, it is not the immediate origin of ſovereignty. For the ſupreme power is founded on the tacit or expreſs conſent of the peo-

ple, without which the ſtate of war ſtill ſubſiſts; for we cannot conceive how there can be an obligation to obey a perſon, to whom we have promiſed no ſubjection. War then is, properly ſpeaking, no more than the occaſion of obtaining the ſovereignty; as the conquered chuſe rather to ſubmit to the victor, than to expoſe themſelves to total deſtruction.

III. Beſides, the acquiſition of ſovereignty by the right of conqueſt cannot, ſtrictly ſpeaking, paſs for lawful, unleſs the war be juſt in itſelf, and the end propoſed authoriſes the conqueror to carry things to ſuch extremity, as to acquire the ſupreme power over the vanquiſhed: that is to ſay, either our enemy muſt have no other means of paying what he owes us, and of indemnifying us for the damages he has committed; or our own ſafety muſt abſolutely oblige us to make him dependent on us. In ſuch circumſtances, it is certain that the reſiſtance of a vanquiſhed enemy, authoriſes us to puſh the acts of hoſtility againſt him ſo far, as to reduce him entirely under our power; and we may, without injuſtice, take advantage of the ſuperiority of our arms, to extort from him the conſent which he ought to give us of his own accord.

IV. Theſe are the true principles on which ſovereignty, by the right of conqueſt, is grounded. Hence we may conclude, that if, upon this foundation, we were to judge of the different acquiſitions of this nature, few of them would be found

well eſtabliſhed; for it rarely happens, that the vanquiſhed are reduced to ſuch extremity, as not to be able to ſatisfy the juſt pretenſions of the conqueror, otherwiſe than by ſubmitting themſelves to his dominion.

V. Let us however obſerve, that the intereſt and tranquillity of nations require, that we ſhould moderate the rigour of the principles above eſtabliſhed. If he who has conſtrained another, by the ſuperiority of his arms, to ſubmit to his dominion, had undertaken a war manifeſtly unjuſt, or if the pretext, on which it is founded, be viſibly frivolous in the judgment of every reaſonable perſon, I freely confeſs that a ſovereignty, acquired in ſuch circumſtances, would be unjuſt; and I ſee no reaſon, why the vanquiſhed people ſhould be more obliged to keep ſuch a treaty, than a man, who had fallen into the hands of robbers, would be under an obligation to pay, at their demand, the money he had promiſed them for the ranſom of his life and liberty.

VI. But if the conqueror had undertaken a war for ſome ſpecious reaſon, though perhaps at the bottom not ſtrictly juſt, the common intereſt of mankind requires, that we ſhould obſerve the engagements we have entered into with him, though extorted by a terror in itſelf unjuſt; ſo long, at leaſt, as no new reaſon ſupervenes, which may lawfully exempt us from keeping our promiſe. For as the law of nature directs that ſocieties, as well as individuals, ſhould labour for their preſervation, it obliges us,

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for this reaſon, not indeed to conſider the acts of hoſtility committed by an unjuſt conqueror as properly juſt, but to look upon the engagement of an expreſs, or tacit treaty, as nevertheleſs valid. So that the vanquiſhed cannot be releaſed from obſerving it, under the pretext of its being cauſed by an unjuſt fear, as he might otherwiſe do, had he no regard to the advantages accruing from it to mankind.

VII. Theſe conſiderations will have ſtill a greater weight, if we ſuppoſe that the conqueror, or his poſterity, peaceably enjoy the ſovereignty which he has acquired by right of conqueſt, and beſides, that he govern the vanquiſhed like a humane and generous prince. In ſuch circumſtances, a long poſſeſſion, accompanied with an equitable government, may legitimate a conqueſt, in its beginning and principle the moſt unjuſt.

VIII. There are modern civilians, who explain the thing ſomewhat differently. Theſe maintain, that in a juſt war the victor acquires a full right of ſovereignty over the vanquiſhed, by the ſingle title of conqueſt, independently of any convention; and even though the victor has otherwiſe obtained all the ſatisfaction, and indemnification, he could require.

IX. The principal argument theſe writers make uſe of, is, that otherwiſe the conqueror could not be certain of the peaceable poſſeſſion of what he has taken, or forced the conquered to give him, for his juſt

juſt pretenſions; ſince they might retake it from him, by the ſame right of war.

X. But this reaſon proves only that the conqueror, who has taken poſſeſſion of the enemy's country, may command in it while he holds it, and not reſign it, till he has good ſecurity that he ſhall obtain or poſſeſs, without hazard, what is neceſſary for the ſatisfaction and indemnity, which he has a right to exact by force. But the end of a juſt war does not always demand, that the conqueror ſhould acquire an abſolute and perpetual right of ſovereignty over the conquered. It is only a favourable occaſion of obtaining it; and for that purpoſe, there muſt always be an expreſs or tacit conſent of the vanquiſhed. Otherwiſe, the ſtate of war ſtill ſubſiſting, the ſovereignty of the conqueror has no other title than that of force, and laſts no longer than the vanquiſhed are unable to throw off the yoke.

XI. All that can be ſaid, is, that the neutral powers, purely becauſe they are ſuch, may, and ought to look upon the conqueror as the lawful poſſeſſor of the ſovereignty, even though they ſhould believe the war unjuſt on his ſide.

XII. The ſovereignty thus acquired by the right of war, is generally of the abſolute kind. But ſometimes the vanquiſhed enter into certain conditions with the conqueror, which limit, in ſome meaſure, the power he acquires over them. Be this as it may, it is certain that no conqueſt ever

authorifes a prince to govern a people tyrannically; fince, as we have before fhewn, the moft abfolute fovereignty gives no right to oppreſs thoſe who have furrendered; for even the very intention of government, and the laws of nature, equally confpire to lay the conqueror under an obligation, of governing thofe whom he has fubdued, with moderation and equity.

XIII. There are, therefore, feveral precautions to be ufed in the exercife of the fovereignty acquired over the vanquifhed; fuch, for inftance, was that prudent moderation of the ancient Romans, who confounded, in fome meafure, the vanquifhed with the victors, by haftening to incorporate them with themfelves, and to make them fharers of their liberty and advantages. A piece of policy doubly falutary; which, at the fame time that it rendered the condition of the vanquifhed more agreeable, confiderably ftrengthened the power and empire of the Romans. "What would our empire now have been," fays Seneca, "if the vanquifhed had not been intermixed "with the victors, by the effect of a found policy?" "Romulus, our founder," fays Claudius in Tacitus, "was very wife with refpect to moft of the people he "fubdued, by making thofe, who were his enemies, "the fame day citizens."

XIV. Another moderation in victory, confifts in leaving to the conquered, either kings or people, the fovereignty which they enjoyed, and not to change the form of their government. No better method can be taken to fecure a conqueft: and of this we have feveral examples in ancient

ancient hiſtory, eſpecially in that of the Romans.

XV. But if the conqueror cannot, without danger to himſelf, grant all theſe advantages to the conquered; yet things may be ſo moderated, that ſome part of the ſovereignty ſhall be left to them, or to their kings. Even when we ſtrip the vanquiſhed intirely of their independency, we may ſtill leave them their own laws, cuſtoms, and magiſtrates, in regard to their private and public affairs, of ſmall importance.

XVI. We muſt not, above all things, deprive the vanquiſhed of the exerciſe of their religion, unleſs they happen to be convinced of the truth of that which the conqueror profeſſes. This complaiſance is not only of itſelf very agreeable to the vanquiſhed, but the conqueror is abſolutely obliged to it; and he cannot, without tyranny, oppreſs them in this article. Not that he ought not to try to bring the vanquiſhed to the true religion; but he ſhould only uſe ſuch means, as are proportioned to the nature of the thing, and to the end he has in view; and ſuch as have in themſelves nothing violent, or contrary to humanity.

XVII. Let us obſerve, laſtly, that not only humanity, but prudence alſo, and even the intereſt of the victor, require that what we have been ſaying, with reſpect to a vanquiſhed people, ſhould be ſtrictly practiſed. It is an important maxim in politics, that it is more difficult to keep, than to conquer pro-

vinces. Conqueſts demand no more than force, but juſtice muſt preſerve them. Theſe are the principal things to be obſerved, in reſpect to the different effects of war, and to the moſt eſſential queſtions relative to that ſubject. But as we have already had occaſion to make mention of the article of neutrality, it will not be improper to ſay ſomething more particular about it.

Of Neutrality.

I. There is a *general*, and a *particular neutrality*. The general is, when without being allied to either of the two enemies at war, we are diſpoſed to render to each the good offices which every nation is naturally obliged to perform to other ſtates.

II. The particular neutrality is, when we are particularly engaged to be neuter by ſome compact, either tacit or expreſs.

III. The latter ſpecies of neutrality is either full and intire, when we behave alike towards both parties; or limited, as when we favour one ſide more than the other.

IV. We cannot lawfully conſtrain any perſon to to enter into a particular neutrality; becauſe every one is at liberty to make, or not make, particular treaties, or alliances; or at leaſt, they are not bound to do it but by virtue of an imperfect obligation. But he, who has undertaken a juſt war, may oblige other

other nations to obſerve an exact and general neutrality; that is to ſay, not to favour his enemy more than himſelf.

V. We ſhall give here an abſtract, as it were, of the duties of neutral nations. They are obliged equally to put in practice, towards both parties at war, the laws of nature, as well abſolute as conditional, whether theſe impoſe a perfect, or only an imperfect obligation.

VI. If they do the one any office of humanity, they ought not to refuſe the like to the other, unleſs there be ſome manifeſt reaſon which engages them to do ſomething in favour of the one, which the other had otherwiſe no right to demand.

VII. But they are not obliged to do offices of humanity to one party, when they expoſe themſelves to great danger, by refuſing them to the other, who has as good a right to demand them.

VIII. They ought not to furniſh either party with things which ſerve to exerciſe acts of hoſtility, unleſs they are authoriſed to do it by ſome particular engagement; and in regard to thoſe which are of no uſe in war, if they ſupply one ſide with them, they muſt alſo the other.

IX. They ought to uſe all their endeavours to bring matters to an accommodation, that the injured party may obtain ſatisfaction, and the war be brought to a ſpeedy concluſion.

X. But

X. But if they be under any particular engagement, they ſhould punctually fulfill it.

XI. On the other ſide, thoſe who are at war muſt exactly obſerve, towards neutral nations, the laws of ſociability, and not exerciſe any act of hoſtility againſt them, nor ſuffer their country to be plundered.

XII. They may however, in caſe of neceſſity, take poſſeſſion of a place ſituated in a neutral country; provided, that as ſoon as the danger is over, they reſtore it to the right owner, and make him ſatisfaction for the damages he has received.

CHAP. IX.

Of public treaties in general.

I. THE ſubject of public treaties conſtitutes a conſiderable part of the law of nations, and deſerves to have its principles and rules explained with ſome exactneſs. By public treaties, we mean ſuch agreements as can be made only by public authority, or thoſe which ſovereigns, conſidered as ſuch, make with each other, concerning things which directly concern the welfare of the ſtate. This is what diſtinguiſhes theſe agreements, not only from thoſe which individuals make with each other, but alſo from the contracts of kings, in regard to their private affairs.

II. What

II. What we have before obſerved, concerning the neceſſity of introducing conventions betwixt private men, and the advantages ariſing from them, may be applied to nations and different ſtates. Nations may, by means of treaties, unite themſelves more particularly into a ſociety, which ſhall reciprocally aſſure them of ſeaſonable aſſiſtance, either for the neceſſaries and conveniencies of life, or to provide for their greater ſecurity upon the breaking out of a war.

III. As this is the caſe, ſovereigns are no leſs obliged, than individuals, inviolably to keep their word, and be faithful to their engagements. The law of nations renders this an indiſpenſable duty; for it is evident, that were it otherwiſe, not only public treaties would be uſeleſs to ſtates, but moreover, that the violation of theſe would throw them into a ſtate of diffidence and continual war; that is to ſay, into the moſt terrible ſituation. The obligation therefore of ſovereigns, in this reſpect, is ſo much the ſtronger, as the violation of this duty has more dangerous conſequences, which intereſt the public felicity. The ſanctity of an oath, which generally accompanies ſolemn treaties, is an additional motive to engage princes to obſerve them with the utmoſt fidelity; and certainly nothing is more ſhameful for ſovereigns, who ſo rigorouſly puniſh ſuch of their ſubjects as fail in their engagements, than to ſport with treaties and public faith, and to look upon theſe only as the means of deceiving each other.

The royal word ought therefore to be inviolable, and ſacred. But there is reaſon to apprehend, that if princes

princes are not more attentive to this point, this expreſſion will ſoon degenerate into an oppoſite ſenſe, in the ſame manner as formerly *Carthaginian faith** was taken for perfidy.

IV. We muſt likewiſe obſerve, that the ſeveral principles already eſtabliſhed concerning the validity of conventions in general, agree to public treaties, as well as to the contracts of individuals. In both, therefore, there muſt be a ſerious conſent, properly declared, and exempt from *error*, *fraud*, and *violence*.

V. If treaties, made in thoſe circumſtances, be obligatory between the reſpective ſtates or ſovereigns, they are alſo binding, with regard to the ſubjects of each prince in particular. They oblige, as compacts between the contracting powers; but they have the force of laws, with reſpect to the ſubjects conſidered as ſuch; for it is evident that two ſovereigns, who conclude a treaty, lay their ſubjects thereby under an obligation of doing nothing contrary to it.

VI. There are ſeveral diſtinctions of public treaties; and 1°. ſome turn ſimply on things, to which we were before obliged by the law of nature; and others ſuperadd ſome particulars to the duties of natural law.

VII. Under the fo[illegible] head we may rank all thoſe treaties, by whic[illegible]e are purely and ſimply en-

* Punica fides..

gaged

gaged to do no injury to others, but, on the contrary, to perform all the duties of humanity towards them. Among civiliſed nations, who profeſs to follow the laws of nature, ſuch treaties are not neceſſary. Duty alone is ſufficient, without a formal engagement. But among the ancients, theſe treaties were thought expedient, the common opinion being, that they were obliged to obſerve the laws of humanity only to fellow-ſubjects, and that they might conſider all ſtrangers as foes, and treat them as ſuch, unleſs they had entered into ſome engagement to the contrary: and of this we have many inſtances in hiſtory. The profeſſion of freebooter, or pirate, was no way ſhameful among ſeveral nations; and the word *hoſtis*, which the Romans uſed to expreſs an enemy, originally ſignified no more than a ſtranger.

VIII. Under the ſecond kind I comprehend all thoſe compacts, by which two nations enter into ſome new, or more particular obligation; as when they formally engage to things to which they were not bound, but in virtue of an imperfect obligation, or even to which they were no ways before obliged.

IX. 2°. Treaties, by which we engage to ſomething more than what we were obliged to, in virtue of the law of nat[illegible] are alſo of two kinds; ſome *equal*, others *uneq*[illegible]

3°. Both are made ei[illegible] time of war, or in full peace.

X. Equal

X. Equal treaties, are thoſe contracted with an entire equality on both ſides; that is to ſay, when not only the engagements and promiſes are equal on both ſides, either purely and ſimply, or in proportion to the ſtrength of each contracting party; but alſo, when they engage on the ſame footing; ſo that neither of the parties is in any reſpect inferior to the other.

XI. Theſe treaties are made, either with a view to *commerce*, or to confederacy in war, or, in ſhort, to any other matter. With reſpect to commerce, for example, by ſtipulating that the ſubjects, on either ſide, ſhall be free from all cuſtom or toll, or that no more ſhall be demanded of them, than of the natives of the country, &c. Equal treaties, or leagues relating to war, are, when we ſtipulate, for example, that each ſhall furniſh the other an equal number of troops, ſhips, and other things; and this in all kinds of war, defenſive as well as offenſive, or in defenſive only, &c. Laſtly, treaties of equality may alſo turn upon any other matter; as when it is agreed, that one ſhall have no forts on the other's frontiers; that one ſhall not grant protection to the other's ſubjects, in ſome criminal caſes, but order them to be ſeized and ſent back; that one ſhall not give the other's enemies paſſage through his country, and the like.

XII. What we have been ſaying, ſufficiently ſhews the meaning of unequal treaties. And theſe are, when the promiſes are either unequal, or ſuch as lay harder conditions on one of the parties, than on the other.

other. The inequality of the things stipulated, is ſometimes on the ſide of the moſt powerful confederate, as when he promiſes his aſſiſtance to the other, without requiring the like; and ſometimes on the ſide of the inferior confederate, as when he engages to do more for the ſtronger, than the latter promiſes in return.

XIII. All the conditions of unequal treaties are not of the ſame nature; ſome there are, which though burdenſome to the inferior ally, yet leave the ſovereignty entire; others, on the contrary, include a diminution of the independance, and ſovereignty of the inferior ally.

Thus, in the treaties between the Romans and the Carthaginians, at the end of the ſecond *Punic war*, it was ſtipulated, that the Carthaginians ſhould not begin any war, without the conſent of the Roman people; an article which evidently diminiſhed the ſovereignty of Carthage, and made her dependent on Rome.

But the ſovereignty of the inferior ally continues entire, though he engages, for example, to pay the other's army, to defray the expences of the war, to diſmantle ſome towns, to give hoſtages, to look upon all thoſe as friends or enemies, who are friends or enemies to the other, to have no forts, or ſtrongholds in certain parts, to avoid ſailing in particular ſeas, to acknowledge the pre-eminence of the other, and, upon occaſion, to [illegible] reverence and honour to his power and majeſty, &c.

XIV. However, though theſe, and other ſimilar con-

conditions, do not diminiſh the ſovereignty, it is certain that ſuch treaties of inequality are often of ſo delicate a nature, as to require the greateſt circumſpection; and that if the prince, who is ſuperior to the other in dignity, ſurpaſſes him alſo conſiderably in ſtrength and power, it is to be feared that the former will gradually acquire an abſolute ſovereignty over him, eſpecially if the confederacy be perpetual.

XV. 4°. Public treaties are alſo divided into *real* and *perſonal.* The latter are thoſe made with a prince, purely in regard to his perſon, and expire with him. The former are ſuch, as are made rather with the whole body of the ſtate, than with the king or government, and which conſequently outlive thoſe who made them, and oblige their ſucceſſors.

XVI. To know which of theſe two claſſes every treaty belongs to, the following rules may be laid down.

1°. We muſt firſt attend to the form and phraſe of the treaty, to its clauſes, and the views propoſed by the contracting parties. *Utrum autem in rem, an in perſonam factum eſt, non minus ex verbis, quam ex mente convenientium æſtimandum eſt* *. Thus, if there be an expreſs clauſe, mentioning that the treaty is perpetual, or for a certain number of years, or for the good of the ſtate, or with the king for him and his ſucceſſors, we may conclude that the treaty is real.

* Leg. vii. § viii. ff. de Pactis.

2°. Every

2°. Every treaty made with a republic, is in its own nature real, becauſe the ſubject, with whom we contract it, is a thing permanent.

3°. Though the government ſhould happen to be changed from a republic into a monarchy, the treaty is ſtill in force, becauſe the body is ſtill the ſame, and has only another chief.

4°. We muſt however make an exception here, which is, when it appears that the preſervation of the republican government was the true cauſe of the treaty; as when two republics enter into an alliance, by which they agree to aſſiſt one another, againſt ſuch as ſhall endeavour by force to alter their conſtitution, and deprive them of their liberties.

5°. In caſe of doubt, every public treaty made with a king ought to be deemed real, becauſe, in dubious caſes, the king is ſuppoſed to act as chief, and for the good of the ſtate.

6°. Hence it follows, that as after the change of a democracy into a monarchy, the treaty is ſtill in force, in regard to the new ſovereign; ſo if the government, from a monarchy, becomes a republic, the treaty made with the king does not expire, unleſs it was manifeſtly perſonal.

7°. Every treaty of peace is real in its own nature, and ought to be kept by the ſucceſſor; for ſo ſoon as the conditions of the treaty have been punctually fulfilled, the peace effectually effaces the injuries which excited the war, and reſtores the nations to their natural ſituation.

8.° If one of the confederates has fulfilled what the treaty obliged him to, and the other ſhould die before he performs the engagements on his part, the

 ſucceſſor

ſucceſſor of the deceaſed king is obliged either intirely to indemnify the other party for what he has performed, or to fulfil his predeceſſor's engagement.

9°. But if nothing is executed on either part, or the performances on both ſides are equal, then if the treaty tends directly to the perſonal advantage of the king, or his family, it is evident, that ſo ſoon as he dies, or his family is extinct, the treaty muſt alſo expire.

10°. Laſtly, we muſt obſerve that it is grown into a cuſtom for ſucceſſors to renew, at leaſt in general terms, even the treaties manifeſtly acknowledged for real, that they may be the more ſtrongly bound to obſerve them, and may not think themſelves diſpenſed from that obligation, under a pretext that they have different ideas concerning the intereſts of the ſtate, from thoſe of their predeceſſors.

XVII. Concerning treaties, or alliances, it is often diſputed, whether they may be lawfully made with thoſe who do not profeſs the true religion? I anſwer, that by the law of nature there is no difficulty in this point. The right of making alliances is common to all men, and has nothing oppoſite to the principles of true religion; which is ſo far from condemning prudence and humanity, that it ſtrongly recommends both *.

XVIII. To judge rightly of the cauſes which put an

* See Grotius on war and peace, book ii. chap. xv. § 8, 9, 10. 11, 12.

an end to public treaties, we muſt carefully attend to the rule of conventions in general.

1°. A treaty, concluded for a certain time, expires at the end of the term agreed on.

2°. When a treaty is once expired, it muſt not be ſuppoſed to be tacitly renewed; for a new obligation is not eaſily preſumed.

3°. And therefore, if after the treaty expires, ſome acts are continued, which ſeem conformable to the terms of the preceding alliance, they ought rather to be looked upon as ſimple marks of friendſhip and benevolence, than as a tacit renovation of the treaty.

4°. We muſt however make this exception, unleſs ſuch acts intervene, as can bear no other conſtruction, than that of a tacit renovation of the preceding compact. Thus, for example, if one ally has engaged to pay another a certain ſum annually, and after the expiration of the term of the alliance, the ſame ſum be paid the following year, the alliance is tacitly renewed for that year.

5°. It is in the nature of all compacts in general, that when one of the parties violates the engagements into which he had entered by treaty, the other is freed, and may refuſe to ſtand to the agreement; for generally each article of the treaty has the force of a condition, the want of which renders it void.

6°. This is generally the caſe, that is to ſay, when there is no agreement contrarywiſe; for ſometimes this clauſe is inſerted, that the violation of any ſingle article of the treaty ſhall not break it intirely, to the end that neither party ſhould fly from their en-

gagements for every ſlight offence. But he who, by the action of another, ſuffers any damage, ought to be indemnified in ſome ſhape or another.

XIX. None but the ſovereign can make alliances and treaties, either by himſelf, or by his miniſters. Treaties concluded by miniſters, oblige the ſovereign and the ſtate, only when the miniſters have been duly authoriſed to make them, and have done nothing contrary to their orders and inſtructions. And here it may be obſerved, that among the Romans the word *fœdus*, *a public compact*, or *ſolemn agreement*, ſignified a treaty made by order of the ſovereign power, or that had been afterwards ratified; but when public perſons, or miniſters of ſtate, had promiſed ſomething relating to the ſovereign power, without advice and command from it, this was called *ſponſio*, or a ſimple promiſe and engagement.

XX. In general it is certain, that when miniſters, without the order of their ſovereign, conclude a treaty concerning public affairs, the latter is not obliged to ſtand to it; and the miniſter, who has entered into the negotiation without inſtructions, may be puniſhed according to the exigency of the caſe. However, there may be circumſtances in which a prince is obliged, either by the rules of prudence, or even thoſe of juſtice and equity, to ratify a treaty, though concluded without his orders.

XXI. When a ſovereign is informed of a treaty, made by one of his miniſters without his orders, his

his *silence* alone does not imply a *ratification*, unless it be accompanied with some act, or other circumstance, which cannot well bear another explication. And much more, if the agreement was made upon condition of its being ratified by the sovereign, it is of no force till he has ratified it in a formal manner.

CHAP. X.

Of compacts made with an enemy.

I. AMONG public compacts, those which suppose *a state of war*, and are made with an enemy, deserve particular attention. Of these there are two kinds; some which do not put an end to the war, but only moderate or suspend the acts of hostility; and others, which end the war entirely. But before we consider these compacts in particular, let us inquire into the validity of them in general.

Whether we ought to keep our faith given to an enemy?

II. This question is certainly one of the most curious and important belonging to the law of nations. Grotius and Puffendorf are not agreed in this point. The former maintains, that all compacts made with an enemy ought to be kept with an inviolable fidelity. But Puffendorf is somewhat dubious with respect to those compacts, which leave us in a state of war, without a design to remove it. Let us therefore endeavour to establish some princi-

 ples,

ples, by means of which we may determine with respect to these two opinions.

III. I observe, 1°. That though war of itself destroys the state of society between two nations, we must not thence conclude that it is subjected to no law, and that all right and obligation are absolutely at an end between enemies.

2°. On the contrary, every body grants that there is a right of war, obligatory of itself, between enemies, and which they cannot violate, without being defective in their duty. This is what we have proved before, by shewing that there are just and unjust wars; and that even in the justest, it is not allowable to push acts of hostility to the utmost extremity, but that we ought to keep within certain bounds; and consequently, that there are things *unjust* and *unlawful*, even with respect to an enemy. Since therefore war does not, of itself, subvert all the laws of society, we cannot from this alone conclude, that because two nations are at war with each other, they are dispensed from keeping their word, and from fulfilling the engagements they have made with each other, during the course of the war.

3°. As war is in itself a very great evil, it is the common interest of nations, not to deprive themselves voluntarily of the means which prudence suggests to moderate the rigour, and to suspend the effects of it. On the contrary, it is their duty to endeavour to procure such means, and to make use of them upon occasion; so far at least, as the attainment of the lawful end of war will permit. Now there is nothing but *public faith* that can procure,

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to the parties engaged in war, the liberty to take breath; nothing but this can ſecure to towns, that have ſurrendered, the ſeveral rights which they have reſerved by capitulation. What advantage would a nation gain, or rather, what is it they would not loſe, if they were to have no regard to their faith given to an enemy, and if they looked upon compacts, made in ſuch circumſtances, only as the means of circumventing one another? Surely it is not to be ſuppoſed, that the law of nature approves of maxims ſo manifeſtly oppoſite to the common good of mankind. Beſides, we ought never to wage war, merely for the ſake of it, but only through neceſſity, in order to obtain a juſt and reaſonable ſatisfaction, and a ſolid peace; from whence it evidently follows, that the right of war between enemies cannot extend ſo far, as to render hoſtilities perpetual, and to create an invincible obſtacle to the re-eſtabliſhment of the public tranquillity.

4°. And yet this would certainly be the conſequence, if the law of nature did not lay us under an indiſpenſable obligation of performing whatever agreement we have voluntarily made with the enemy during the war; whether theſe agreements tend only to ſuſpend, or moderate acts of hoſtility, or whether they are deſigned to make them ceaſe intirely, and to re-eſtabliſh peace.

For, in ſhort, there are only two ways of obtaining peace. The firſt is, the total and entire deſtruction of our enemy; and the ſecond is, the entering into articles of treaty with him. If therefore treaties and compacts, made between enemies, were not in themſelves ſacred and inviolable, there would

be no other means of procuring a ſolid peace, than carrying on the war to the utmoſt extremity, and to the total ruin of our enemies. But who does not ſee that a principle, which tends to the deſtruction of mankind, is directly contrary to the law of nature and nations, whoſe principal end is the preſervation and happineſs of human ſociety?

5°. There is no diſtinction, in this reſpect, between the different treaties that we may enter into with an enemy; for the obligation which the laws of nature lay upon us, to obſerve them inviolably, relates as well to thoſe which do not put an end to the war, as to thoſe which tend to re-eſtabliſh peace. There is no medium, and we muſt lay it down as a general rule, that all compacts with an enemy are obligatory, or that none of them are really ſuch.

And, indeed, if it were lawful, for inſtance, to break a ſolemn truce, and to detain, without any reaſon for it, people, to whom we had given paſſports, &c. what harm would there be in circumventing an enemy, under a pretext of treating of peace? When we enter into a negotiation of this kind, we are ſtill enemies; and it is properly but a kind of truce, which we agree to, in order to ſee if there be any means of coming to an accommodation. If the negociations prove unſucceſsful, it is not then a new war which we begin, ſince the differences, that occaſioned our taking up arms, are not yet adjuſted; we only continue the acts of hoſtility which had been ſuſpended for ſome time: ſo that we could no more rely on the enemy's ſincerity, with reſpect to compacts which tend to re-eſtabliſh peace,

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than to those whose end is only to suspend, or moderate acts of hostility. Thus distrusts would be continual, wars eternal, and a solid peace unattainable.

6°. The more frequent unnecessary wars are become, through the avarice and ambition of sovereigns, the more a steady adherence to the principles, here established, is indispensably necessary for the interest of mankind. Cicero therefore justly affirms, that there is a right of war, which ought to be observed between the contending parties, and that the enemy retains certain rights, notwithstanding the war *.

Nor is it sufficient to say, as Puffendorf does, that it is a custom which, among others, has obtained among civilized nations, out of particular respect to military bravery, that all compacts made with an enemy ought to be looked upon as valid. He should also have added, that this is an indispensable duty, that justice requires it, that it is not in the power of nations to establish things on another footing, and that they cannot justly deviate from the rules which the law of nature prescribes, in this case, for their common advantage.

IV. It will not be difficult, by means of the principles here established, to answer the arguments by which Puffendorf pretends to shew, that all compacts made with an enemy, are not of themselves obligatory. We shall be content with observing, 1°. that those arguments prove nothing, because they

* *Est etiam jus bellicum; fidesque jurisjurandi sæpe cum hoste servanda.* Off. lib. iv. cap. 29.

they prove too much, &c. and 2°. all that can be concluded from them is, that we ought to act prudently, and take proper precautions before we pass our word, or enter into any engagement with an enemy; because mankind are apt to break their promises for their own interest, especially when they have to deal with people whom they hate, or by whom they are hated.

V. But it will be said, is it not a principle of the law of nature, that all conventions and treaties, extorted by injustice and violence, are void of themselves; and consequently, that he who has been forced to make them against his will, may lawfully break his word, if he thinks he can do it with safety?

Violence and force are the characteristics of war; and it is generally the conqueror that obliges the vanquished to treat with him, and by the superiority of his arms, constrains them to accept the conditions he proposes to them, whether the war he has undertaken be just or not. How then is it possible, that the law of nature and nations should declare treaties, made in those circumstances, to be sacred and inviolable?

I answer, that however true the principle on which this objection is founded, may be in itself, yet we cannot apply it, in all its extent, to the present question.

The common interest of mankind requires, that we should make some difference between promises extorted by fear, among private persons, and those to which a sovereign prince or people is constrained, by the superiority of the arms of a conqueror, whose

pre-

pretensions were unjust. The law of nations then makes an exception here to the general rule of the law of nature, which disannuls conventions extorted by unjust fear; or, in other words, the law of nations holds for just on both sides, that dread or apprehension which induces enemies to treat with each other, during the course of a war; for otherwise, there would be no method, either of moderating its fury, or of putting a final period to it, as we have already demonstrated.

VI. But that nothing may be omitted, relating to this question, we shall add something for the further illustration of what we have been saying.

First then, it is necessary, I think, to distinguish here, whether he, who by the superiority of his arms has compelled his enemy to treat with him, had undertaken the war without reason; or whether he could alledge some specious pretext for it. If the conqueror had undertaken the war for some plausible reason, though perhaps unjust at bottom, then it is certainly the interest of mankind, that the law of nations should make us regard the treaties, concluded in such circumstances, as valid and obligatory; so that the conquered cannot refuse to observe them, under a pretext that they were extorted by an unjust fear.

But if we suppose that the war was undertaken without reason, or if the motive alledged be manifestly frivolous, or unjust, as Alexander's going to subdue remote nations, who had never heard of him, &c. As such a war is a downright robbery, I confess I do not think the vanquished more obliged to observe the treaty to which they were compelled, than

than a man, fallen into the hands of thieves, is bound to pay a ſum of money, which he had promiſed them, as a ranſom for his life or liberty.

VII. We muſt alſo add, as a very neceſſary remark, that even ſuppoſing the war was undertaken for ſome apparent and reaſonable cauſe, if the treaty, which the conqueror impoſes on the vanquiſhed, includes ſome condition manifeſtly barbarous, and intirely contrary to humanity; we cannot, in thoſe circumſtances, deny the vanquiſhed a right of receding from their engagement, and of beginning the war afreſh, in order to free themſelves, if they can, from the hard and inhuman conditions to which they were ſubjected, by the abuſe their enemy made of his victory, contrary to the laws of humanity. The juſteſt war does not authoriſe the conqueror to keep no meaſures, or to uſe all liberties with reſpect to the vanquiſhed; and he cannot reaſonably complain of the breaking of a treaty, the conditions of which are both unjuſt in themſelves, and full of barbarity and cruelty.

VIII. The Roman hiſtory furniſhes us with an example to this purpoſe, which deſerves our notice.

The Privernates had been ſeveral times ſubdued by the Romans, and as often revolted; but their city was at laſt retaken by the conſul Plautius. In theſe diſtreſſed circumſtances, they ſent ambaſſadors to Rome to ſue for peace. Upon a ſenator's aſking them what puniſhment they thought they deſerved; one of them anſwered, *That which is due to men who think themſelves worthy of liberty.* Then the conſul aſked

aſked them, whether there was any room to hope, that they would obſerve the peace, if their faults were pardoned: "The peace ſhall be perpetual between "us, replied the ambaſſador, and we ſhall faithfully "obſerve it, if the conditions you lay upon us are "juſt and reaſonable; but if they are hard and diſ-"honourable, the peace will not be of long conti-"nuance, and we ſhall very ſoon break it."

Though ſome of the ſenators were offended at this anſwer, yet moſt of them approved of it, and ſaid that it was worthy of a man, and of a man who was born free: acknowledging therefore the rights of human nature, they cried out, that thoſe alone deſerved to be citizens of Rome, who eſteemed nothing in compariſon of liberty. Thus the very perſons, who were at firſt threatened with puniſhment, were admitted to the privilege of citizens, and obtained the conditions they wanted; and the generous refuſal of the Privernates to comply with the terms of a diſhonourable treaty, gained them the honour of being incorporated into a ſtate, which at that time could boaſt of the braveſt, and moſt virtuous ſubjects in the univerſe *.

Let us therefore conclude, that a due medium is to be obſerved, that we ought inviolably to obſerve treaties made with an enemy, and that no exception of an unjuſt fear ſhould authoriſe us to break our promiſe, unleſs the war was a downright robbery, or the conditions impoſed on us were highly unjuſt, and full of barbarity and cruelty.

IX. There is ſtill another caſe, in which we may

* Livy, lib. viii. cap. xx, xxi.

avoid

avoid the crime of perfidiouſneſs, and yet not perform what we have promiſed to an enemy; which is, when a certain condition, ſuppoſed to be the baſis of the engagement, is wanting. This is a conſequence of the very nature of compacts; by this principle, the infidelity of one of the contracting parties ſets the other at liberty: for, according to the common rule, all the article of the ſame agreement are included one in the c r, in the manner of a condition, as if a perfor were expreſsly to ſay, *I will do ſuch or ſuch a t ng, provided you do ſo or ſo* *.

CHAP. XI.

Of compacts with an enemy, which do not put an end to the war.

I. AMONG thoſe compacts which leave us in a ſtate of war, one of the principal is a *truce*.

A truce is an agreement, by which we engage to forbear all acts of hoſtility for ſome time, the war ſtill continuing.

II. A truce is not therefore a peace, for the war continues. But if we agree, for inſtance, to certain contributions during the war, as theſe are granted only to prevent acts of hoſtility, they ought to ceaſe during the truce; ſince, at that time, ſuch acts are not lawful. And, on the contrary, if it be agreed

* See above.

that

that any particular thing is to take place in time of peace, the time of truce is not included.

III. As every truce leaves us in a ſtate of war, it follows, that after the term is expired, there is no neceſſity that war ſhould be declared again; becauſe we do not commence a new war, but only continue that in which we were already engaged.

IV. This principle, that the war renewed after a truce is not a new war, may be applied to ſeveral other caſes. In a treaty of peace, concluded between the biſhop of Trent and the Venetians, it was agreed, *that each party ſhould be put in poſſeſſion of what they enjoyed before the laſt war.*

In the beginning of this war the biſhop had taken a caſtle from the Venetians, which they afterwards retook. The biſhop refuſed to give it up, under a pretext that it had been retaken after ſeveral truces, which had been made during the courſe of that war. The diſpute was evidently to be decided in favour of the Venetians.

V. There are truces of ſeveral kinds.

1°. Sometimes, during the truce, the armies on both ſides are in the field, and in motion; and theſe are generally limited to a few days. At other times the parties lay down their arms, and retire to their own countries; and in this caſe the truces are of longer duration.

2°. There is a *general truce* for all the territories and dominions of both parties; and a *particular truce* reſtrained to particular places; as for example, by ſea, and not by land, &c.

3°. Laſtly,

3°. Laſtly, there is an abſolute, indeterminate and general truce, and a truce limited and determined to certain things; for example, to bury the dead, or if a beſieged town has obtained a truce, only to be ſheltered from certain attacks, or from particular acts of hoſtility, ſuch as ravaging the country.

VI. We muſt alſo obſerve, that, ſtrictly ſpeaking, a truce can be made only by expreſs agreement; and that it is very difficult to eſtabliſh a treaty of this kind on the footing of a tacit convention, unleſs the facts are ſuch in themſelves, and in their circumſtances, that they can be referred to no other principle, than to a ſincere deſign of ſuſpending acts of hoſtility for a time.

Thus, though for a time we abſtain from acts of hoſtility, the enemy cannot from that alone conclude, that we have conſented to a truce.

VII. The nature of a truce ſufficiently ſhews what the effects of it are.

1°. If the truce be general and abſolute, all acts of hoſtility ought, generally ſpeaking, to ceaſe, both with reſpect to perſons and things; but this ſhould not hinder us, during the truce, to raiſe new troops, erect magazines, repair fortifications, &c. unleſs there be ſome formal convention to the contrary; for theſe are not in themſelves acts of hoſtility, but defenſive precautions, which may be taken in time of peace.

2°. It is a violation of the truce, to ſeize on any place poſſeſſed by the enemy, by corrupting the gar-

rifon. It is alfo evident, that we cannot juftly, during a truce, take poffeffion of places deferted by the enemy, but really belonging to him, whether the garrifon were withdrawn before or after the truce.

3°. In confequence hereof, we muft reftore thofe things belonging to the enemy, which during the truce have accidentally fallen into our hands, even though they had been formerly our property.

4°. During a truce, it is allowed to pafs and repafs from one place to another, but without any train or attendance that may give umbrage.

VIII. And here it may be afked, whether they who, by any unexpected and inevitable accident, are found unfortunately in the enemy's country, at the expiration of a truce, can be detained prifoners, or ought to have the liberty of retiring? Grotius and Puffendorf maintain, that by the right of war we may detain them as prifoners; but Grotius adds, that it is certainly more humane and generous, not to infift on fuch a right. I am of opinion, that it is the confequence of a treaty of truce, that we fhould fet fuch perfons at liberty: for fince, in virtue of that engagement, we are obliged to grant them free egrefs and regrefs, during the time of the truce; we ought alfo to grant them the fame permiffion after the truce is expired, if it appears manifeftly that a fuperior force, or an unexpected accident, has hindered them from making ufe of it during the time agreed upon. Otherwife, as thefe accidents may happen every day, fuch a permiffion would often become a fnare to make a great many

 people

people fall into the hands of the enemy. [...]
are the principal effects of an abſolute and g[...]
truce.

IX. With regard to a particular truce, dete[...] to certain things, its effects are limited by the particular nature of the agreement.

1°. Thus if a truce be granted only for burying the dead, we ought not to undertake any thing new, which may alter our ſituation; for inſtance, we cannot, during that time, retire into a more ſecure poſt, nor intrench ourſelves, &c. for he, who has granted a ſhort truce for the interment of the dead, has granted it for that purpoſe only, and there is no reaſon to extend it beyond the caſe agreed on. Hence it follows, that if he, to whom ſuch a truce has been allowed, ſhould take advantage of it to intrench himſelf, for example, or for ſome other uſe, the other party would have a right to prevent him by force. The former could not complain; for it never could be reaſonably pretended, that a truce, which was allowed for the interment of the dead, and reſtrained to that ſingle act, gives a right to undertake, and carry on any other thing undiſturbed. The only obligation it impoſes on the perſon who has granted it, is, not forcibly to oppoſe the interment of the dead; though Puffendorf, indeed, is of a contrary opinion *.

2°. It is in conſequence of the ſame principles, that if we ſuppoſe that by the truce perſons only, and not things, are protected from acts of hoſtility; in this caſe, if in order to defend our goods we

* See the Law of nature and nations, book viii. chap. vii. § 9.

wound

wound any perfon, it is not a breach of the truce; for when the fecurity of perfons on both fides is agreed on, the right of defending againft pillage is alfo referved. And hence the fecurity of perfons is not general, but only for thofe who go and come without defign to take any thing from the enemy, with whom fuch limited truce is made.

X. Every truce obliges the contracting parties, from the moment the agreement is concluded. But the fubjects on both fides are under no obligation in this refpect, till the truce has been folemnly notified. Hence it follows, that if before this notification the fubjects commit any acts of hoftility, or do fomething contrary to the truce, they are liable to no punifhment. The powers, however, who have concluded the truce, ought to indemnify thofe that have fuffered, and to reftore things, as much as poffible, to their former ftate.

XI. Laftly, if the truce fhould happen to be violated on one fide, the other is certainly at liberty to proceed to acts of hoftility, without any new declaration. Yet when it is agreed, that he who firft breaks the truce fhall pay a certain fine; if he pays the fine, or fuffers the penalty, the other has not a right to begin acts of hoftility, before the expiration of the term: but befides the penalty ftipulated, the injured party has a right to demand an indemnification of what he has fuffered by the violation of the truce. It is to be obferved however, that the actions of private perfons do not break a truce, unlefs the fovereign has fome hand in them, either by order, or

by approbation; and he is ſuppoſed to appr ve what has been done, if he will neither puniſh, nor deliver up the offender, or if he refuſes to reſtore the things taken during the ceſſation of arms.

XII. Safe conducts are , compacts made between enemies, and deſerve to be conſidered. By a ſafe conduct, we underſtand a privilege granted to ſome perſon of the enemy's party, without a ceſſation of arms; by which he has free paſſage and return, and is in no danger of being moleſted.

XIII. The ſeveral queſtions relating to ſafe conducts may be decided, either by the nature of the privilege granted, or by the general rules of right interpretation.

1°. A ſafe conduct granted to ſoldiers, extends not only to inferior officers, but alſo to thoſe who command in chief; becauſe the natural and ordinary uſe of the word has determined it ſo.

2°. If leave be given to go to a certain part, it implies one alſo to return, otherwiſe the former permiſſion would be often uſeleſs. There may, however, be caſes, in which the one does not imply the other.

3°. He that has had leave to come, has not, generally ſpeaking, liberty to ſend another in his place; and, on the contrary, he who has had a permiſſion to ſend another perſon, cannot come himſelf; becauſe theſe are two different things, and the permiſſion ought to be naturally reſtrained to the perſon himſelf, to whom it was granted; for perhaps it would not have been given to another.

4°. A

4°. A father who has obtained a paſs-port, cannot take his ſon with him, nor a huſband his wife.

5°. As to ſervants, though not mentioned, it ſhall be preſumed to be allowed to take one or two, or even more, according to the quality of the perſon.

6°. In a dubious caſe, and generally ſpeaking, licence to paſs freely, does not ceaſe by the death of him who has granted it; the ſucceſſor, however, may for good reaſons revoke it: but in ſuch a caſe the perſon, to whom the paſs-port has been granted, ought to have notice given him, and the neceſſary time allowed him for betaking himſelf to a place of ſafety.

7°. A ſafe conduct, granted during pleaſure, imports of itſelf a continuation of ſafe conduct, till expreſsly revoked; for otherwiſe, the will is ſuppoſed to ſubſiſt ſtill the ſame, whatever time may be elapſed: but ſuch a ſafe conduct expires, if the perſon who has given it, is no longer in the employment, in virtue of which he was impowered to grant ſuch ſecurity.

XIV. The redemption of captives is alſo a compact often made, without putting an end to the war. The ancient Romans were very backward in the ranſoming of priſoners. Their practice was to examine whether thoſe, who were taken by the enemy, had obſerved the laws of military diſcipline, and conſequently, whether they deſerved to be ranſomed. But the ſide of rigour generally prevailed, as moſt advantageous to the republic.

XV. Yet in general, it is more agreeable, both to the good of the ſtate, and to humanity, to ranſom

 priſoners;

prifoners; unlefs experience convinces us that it is neceffary to ufe that feverity towards them, in order to prevent or redrefs greater evils, which would otherwife be unavoidable.

XVI. An agreement made for the ranfom of a prifoner cannot be revoked, under a pretext that he is found to be much richer than we imagined: for this circumftance, of the prifoner's being more or lefs rich, has no relation to the engagement; fo that if his ranfom were to be fettled by his worth, that condition fhould have been fpecified in the contract.

XVII. As prifoners of war are not now made flaves, the captor has a right to nothing but what he actually takes: hence money, or other things, which a prifoner has found means to conceal, certainly remain his property, and he may confequently make ufe of them to pay his ranfom. The enemy cannot take poffeffion of what they know nothing of; and the prifoner lies under no obligation to make a difcovery of all his effects.

XVIII. There is alfo another queftion, whether the heir of a prifoner of war is obliged to pay the ranfom, which the deceafed had agreed upon? The anfwer is eafy, in my opinion. If the prifoner died in captivity, the heir owes nothing, for the promife of the deceafed was made upon condition, that he fhould be fet at liberty: but if he was fet at liberty before he died, the heir is certainly chargeable with the ranfom.

XIX. One

XIX. One queſtion more, is, whether a priſoner, who was releaſed on condition of releaſing another, is obliged to return to priſon, if the other dies before he has obtained his releaſement? I anſwer, that the releaſed priſoner is not obliged to return into cuſtody, for that was not ſtipulated in the agreement; neither is it juſt that he ſhould enjoy his liberty for nothing. He muſt therefore give an indemnification, or pay the full value of what he could not perform.

CHAP. XII.

Of compacts made, during the war, by ſubordinate powers, as generals of armies, or other commanders.

I. ALL that has been hitherto ſaid, concerning compacts between enemies, relates to thoſe made by ſovereign powers. But ſince princes do not always conclude ſuch agreements themſelves, we muſt now enquire into treaties made by generals, or other inferior commanders.

II. In order to know whether theſe engagements oblige the ſovereign, the following principles will direct us.

1°. Since every perſon may enter into an engagement, either by himſelf or by another, it is plain that the ſovereign is bound by the compacts made by his miniſters or officers, in conſe-

 quence

quence of the full powers and orders exprefsly given them.

2°. He that gives a man a certain power, is reafonably fuppofed to have given him whatever is a neceffary confequence and appendage of that power, and without which it cannot be exercifed. But he is not fuppofed to have granted him any thing further.

3°. If he, who has had a commiffion to treat, has kept within the bounds of the power annexed to his office, though he acts contrary to his private inftructions, the fovereign is to abide by what he has done; otherwife we could never depend on engagements contracted by proxy.

4°. A prince is alfo obliged by the act of his minifters and officers, though done without his orders, if he has ratified the engagements they have made, either by an exprefs confent, and then there is no difficulty, or in a tacit manner; that is to fay, if being informed of what has paffed, he yet permits things to be done, or does them himfelf, which cannot reafonably be referred to any other caufe, than the intention of executing the engagements of his minifter, though contracted without his participation.

5°. The fovereign may alfo be obliged to execute the engagements contracted by his minifters without his orders, by the law of nature, which forbids us to enrich ourfelves at another's expence. Equity requires, that in fuch circumftances we fhould exactly obferve the conditions of the contract, though concluded by minifters who had not full powers.

6°. Thefe

6°. These are the general principles of natural equity, in virtue of which sovereigns may be more or less obliged to stand to the agreement of their ministers. But to what has been said, we must add this general exception: unless the laws and customs of the country have regulated it otherwise, and these be sufficiently known to the persons with whom the agreement is made.

7°. Lastly, if a public minister exceeds his commission, so that he cannot perform what he has promised, and his master is not obliged to it, he himself is certainly bound to indemnify the person with whom he has treated. But if there should be any deceit on his part, he may be punished for it, and his person, or his goods, or both, are liable to be seized, in order to make a recompence.

III. Let us apply these general principles to particular examples.

1°. A commander in chief cannot enter into a treaty that regards the causes and consequences of the war; for the power of making war, in whatever extent it has been given, does not imply the power of finishing it.

2°. Neither does it belong to generals to grant truces for a considerable space of time; for 1°. that does not necessarily depend on their commission. 2°. The thing is of too great consequence to be left entirely to their discretion. 3°. And lastly, circumstances are not generally so pressing, as not to admit of time to consult the sovereign; which a general ought to do, both in duty and prudence, as much as possible, even with respect to things which he has a power to transact of himself.

Much

Much lefs, therefore, can generals conclude thefe kinds of truces, which withdraw all the appearance of war, and come very near a real peace.

3°. With refpect to truces of a fhort duration, it is certainly in the power of a general to make them; for example, to bury the dead, &c.

IV. Lieutenant-generals, or even inferior commanders, may alfo make particular truces, during the attack, for inftance, of a body of the enemy intrenched, or in the fiege of a town; for this being often very neceffary, it is reafonably prefumed, that fuch a power muft needs be included in the extent of their commiffion.

V. But a queftion here arifes, whether thefe particular truces oblige only the officers who granted them, and the troops under their command, or whether they bind the other officers, and even the commander in chief? Grotius declares for the firft opinion, though the fecond appears to me the beft founded; for 1°. fince we fuppofe that it is in confequence of the tacit confent of the fovereign, that fuch a truce has been granted by an inferior commander, no other officer, whether equal or fuperior, can break the agreement, without indirectly wounding the authority of the fovereign.

2°. Befides, this would lay a foundation for fraud and diftrufts, which might tend to render the ufe of truces, fo neceffary on feveral occafions, ufelefs and impracticable.

VI. It does not belong to a general to releafe perfons

ſons taken in war, nor to diſpoſe of conquered ſovereignties and lands.

VII. But it is certainly in the power of generals to grant, or leave things, which are not as yet actually poſſeſſed: becauſe in war many cities, for example, and often men, ſurrender themſelves, upon condition of preſerving their lives and liberties, or ſometimes their goods; concerning which the preſent circumſtances do not commonly allow time ſufficient to conſult the ſovereign. Inferior commanders ought alſo to have this right, concerning things within the extent of their commiſſion.

VIII. In fine, by the principles here eſtabliſhed, we may eaſily judge of the conduct of the Roman people, with reſpect to Bituitus king of the Arverni, and to the affair of the Caudine Forks.

CHAP. XIII.

Of compacts made with an enemy by private perſons.

I. IT ſometimes happens in war, that private perſons, whether ſoldiers or others, make compacts with an enemy. Cicero juſtly remarks, that if a private perſon, conſtrained by neceſſity, has promiſed any thing to the enemy, he ought religiouſly to keep his word *.

* De Offic. lib. i. cap. xiii.

II. And,

II. And, indeed, all the principles hitherto eftablifhed, manifeftly prov[illegible]e juftice and neceffity of this duty. Befides, un[illegible]is be allowed, frequent obftacles would be put to [illegible]rty, and an occafion given for maffacres, &c.

III. But though thefe compacts are valid in themfelves, yet it is evident that no private perfon has a right to alienate public property; for this is not allowed even to generals of armies.

IV. With refpect to the actions and effects of each individual, though the covenants made with the enemy on thefe affairs may fometimes be prejudicial to the ftate, they are binding neverthelefs. Whatever tends to avoid a greater evil, though detrimental in itfelf, ought to be confidered as a public good; as for example, when we promife to pay certain contributions to prevent pillage, or the burning of places, &c. Even the laws of the ftate cannot, without injuftice, deprive individuals of the right of providing for their own fafety, by impofing too burdenfome an obligation on the fubjects, entirely repugnant to nature and reafon.

V. It is in confequence of thefe principles that we think a captive bound to perform the promife he has made of returning to prifon. Without this he would not be fuffered to go home; and it is certainly better for him, and for the ftate, that he fhould have this permiffion for a time, than that he remain always in captivity. It was, therefore, to fulfill his duty, that Regulus

Regulus returned to Carthage, and ſurrendered himſelf into the hands of the enemy *.

VI. We muſt judge in like manner, of the promiſe by which a priſoner engages *not to bear arms againſt the releaſer*. In vain would it be objected, that ſuch an engagement is contrary to the duty we owe to our country. It is no way contrary to the duty of a good citizen, to procure his liberty by promiſing to forbear a thing which it is in the enemy's power to hinder. His country loſes nothing by that, but rather gains; ſince a priſoner, ſo long as he is not releaſed, is as uſeleſs to it, as if he were really dead.

VII. If a priſoner has promiſed not to make his eſcape, he ought certainly to keep his word; even though he was in fetters when he made it. But if a perſon has given his word, on condition that he ſhould not be confined in that manner, he may break it, if he be laid in irons.

VIII. But here ſome will aſk, whether private men, upon refuſing to perform what they have promiſed to the enemy, may be compelled to it by the ſovereign? I anſwer, certainly: otherwiſe it would be to no purpoſe, that they were bound by a promiſe, if no one could compel them to perform it.

* Cicer. de Offic. lib. iii. cap. xxix.

CHAP.

CH . XIV.

Of public compacts which put an end to war.

I. COMPACTS which put an end to war, are either *principals* or *accessories*. Principals are those which terminate the war, either by themselves, as a treaty of peace; or by a consequence of what has been agreed upon, as when the end of the war is referred to the decision of lot, to the success of a combat, or to the judgment of an arbitrator. Accessories are such, as are sometimes joined to the principal compacts, in order to confirm them, and to render the execution of them more certain. Such are hostages, pledges, and guarantees.

II. We have already treated of single combats agreed on by both parties, and of arbitrators, considered as means of hindering or terminating a war; it now only remains that we speak of treaties of peace.

III. The first question which presents itself on this subject is, whether compacts, which terminate a war, can be disannulled by the exception of an unjust fear which has extorted them?

After the principles above established, to shew that we ought to keep our faith given to an enemy, it is not necessary to prove this point again. Of all public conventions, treaties of peace are those which a nation ought to look upon as most sacred and inviolable,

violable, ſince nothing is of greater importance to the repoſe and tranquillity of mankind. As princes and nations have no common judge, to take cognizance of their differences, and to decide concerning the juſtice of a war, we could never depend on a treaty of peace, if the exception of an unjuſt fear was in this caſe to be generally admitted. I ſay *generally*, for when the injuſtice of the conditions of the peace is highly evident, and the unjuſt conqueror abuſes his victory ſo far, as to impoſe the hardeſt, cruelleſt, and moſt intolerable conditions on the vanquiſhed, the law of nations cannot authoriſe ſuch treaties, nor lay an obligation on the vanquiſhed tamely to ſubmit to them. Let us alſo add, that though the law of nations ordains, that, except in the caſe here mentioned, treaties of peace are to be faithfully obſerved, and cannot be diſannulled, under a pretext of an unjuſt conſtraint; it is nevertheleſs certain, that the conqueror cannot in conſcience take the advantage of ſuch a treaty, and that he is obliged, by internal juſtice, to reſtore all that he has taken in an unjuſt war.

IV. Another queſtion is, to know whether a ſovereign, or a ſtate, is obliged to obſerve treaties of peace which they have made with their rebellious ſubjects? I anſwer, 1°. that when a ſovereign has reduced rebellious ſubjects by force of arms, he may deal with them as he ſees beſt. 2°. But if he has entered into any accommodation with them, he is thereby ſuppoſed to have pardoned them what is paſt; ſo that he cannot lawfully refuſe to keep his word, under a pretext that he has given it to rebellious ſub-

jects. This obligation is so much the more inviolable, as princes are apt to give the name of rebellion to a resistance, by which the subject only maintains his just rights, and oppoſes the violation of the most essential engagements of sovereigns. History furnishes but too many examples of this kind.

V. None but he who has the power of making war, has a right to terminate it by a treaty of peace. In a word, this is an essential part of sovereignty. But can a king, who is a prisoner, make a treaty of peace, which shall be valid, and binding to a nation? I think not, for there is no probability, that the people would have conferred the supreme power upon one, with a right to exercise it, even in matters of the greatest importance, at a time when he is not master of his own person. But with respect to contracts which a king, though a prisoner, has made concerning what belongs to him in private, they are certainly valid, according to the principles established in the preceding chapter. But what shall we say of a king who is in exile? If he has no dependance upon any person, it is undoubtedly in his power to make peace.

VI. To know for certainty what things a king can dispose of by a treaty of peace, we need only consider the nature of the sovereignty, and the manner in which he possesses it.

1°. In patrimonial kingdoms, considered in themselves, nothing hinders but that the monarch may alienate the sovereignty, or a part of it.

2°. But princes, who hold the sovereignty only

in

in an usufructuary manner, cannot by any treaty alienate it, either in whole or in part. To render such alienations valid, the consent of the body of the people, or of the states of the kingdom, is necessary.

3°. With respect to the crown domains, or the goods of the kingdom, it is not generally in the power of the sovereign to alienate them.

4°. With regard to the effects of private subjects, the sovereign, as such, has a transcendental or supereminent right over the goods and fortunes of private men; consequently he may give them up, as often as the public advantage or necessity requires it; but with this consideration, that the state ought to indemnify the subject for the loss he has sustained beyond his own proportion.

VII. For the better interpretation of the articles of a treaty of peace, we need only attend to the general rules of interpretation, and the intention of the contracting parties.

1°. In all treaties of peace, if there be no clause to the contrary, it is presumed that the parties hold themselves reciprocally discharged from all damages occasioned by the war. Hence the clauses of general amnesty are only for the greater precaution.

2°. But the debts between individuals, contracted before the war, and the payment of which could not be exacted during the war, are not to be accounted forgiven by the treaty of peace.

3°. Unknown injuries, whether committed before, or during the war, are supposed to be com-

prehended in the general terms, by which we forgive the enemy the evil he has done us.

4°. Whatever has been taken ſince the concluſion of the peace, muſt ce[illegible]ly be reſtored.

5°. If the time b[illegible]ited, in which the conditions of peace are to [illegible]erformed, it muſt be interpreted in the ſtrict [illegible]enſe; ſo that when it is expired, the leaſt delay is inexcuſable, unleſs it proceeds from a ſuperior force, or it manifeſtly appears that it is owing to no bad deſign.

6°. It is laſtly to be obſerved, that every treaty of peace is of itſelf perpetual, and, as it were, eternal in its nature; that is to ſay, the parties are ſuppoſed to have agreed never to take up arms on account of the differences which occaſioned the war, and for the future to look upon them as entirely at an end.

VIII. It is alſo an important queſtion to know, when a peace may be looked upon as broken.

1°. Some diſtinguiſh between *breaking a peace*, and *giving a new occaſion of war*. To break a peace, is to violate an article of the treaty; but to give a new occaſion of war, is to take up arms for a new reaſon not mentioned in the treaty.

2°. But when we give a new occaſion of war in this manner, the treaty is by ſuch means indirectly broken, if we refuſe to make ſatisfaction for the offence: for then the offended having a right to take up arms, and to treat the offender as an enemy, againſt whom every thing is lawful, he muſt alſo certainly diſpenſe with obſerving the conditions of the peace, though the treaty has not been formally broken with reſpect

reſpect to its tenor. Beſides, this diſtinction cannot be much uſed at preſent; becauſe treaties of peace are conceived in ſuch a manner, as to include an engagement to live for the future in good friendſhip, in all reſpects. We muſt therefore conclude, that every new act of unjuſt hoſtility is an infringement of the peace.

3°. As to thoſe who only repel force by force, they by no means break the peace.

4°. When a peace is concluded with ſeveral allies of him with whom the treaty has been made, the peace is not broken, if one of thoſe allies takes up arms, unleſs it has been concluded on that footing. But this is what cannot be preſumed, and certainly they who thus invade us without the aſſiſtance of others, ſhall be conſidered as the breakers of the peace.

5°. Acts of violence or hoſtility, which ſome ſubjects may commit of their own accord, cannot break the peace, except we ſuppoſe that the ſovereign approves them; and this is preſumed, if he knows the fact, has power to puniſh it, and neglects to do ſo.

6°. The peace is ſuppoſed to be broken, when, without a lawful reaſon, acts of hoſtility are committed, not only againſt the whole body of a ſtate, but alſo againſt private perſons; for the end of a treaty of peace is, that every ſubject ſhould, for the future, live in perfect ſecurity.

7°. The peace is certainly broken by a contravention to the clear and expreſs articles of the treaty. Some civilians, however, diſtinguiſh between the articles of *great importance*, and thoſe of *ſmall im-*

portance. But this diftinction is not only uncertain in itfelf, but alfo very difficult and delicate in its application. In general, all the articles of a treaty ought to be looked upon as important enough to be obferved. We muft, however, pay fome regard to what is required by humanity, and rather pardon flight faults, than purfue the reparation of them by arms.

8°. If one of the parties is, by an abfolute neceffity, reduced to an impoffibility of performing his engagements, we are not for that to look upon the peace as broken; but the other party ought either to wait fome time for the performance of what has been promifed, if there be ftill any hope of it, or he may demand a reafonable equivalent.

9°. Even when there is treachery on one fide, it is certainly at the choice of the innocent party to let the peace fubfift; and it would be ridiculous to pretend, that he who firft infringes the peace can difengage himfelf from the obligation which he lay under, by acting contrary to that very obligation.

IX. To treaties of peace, for the fecurity of their execution, are fometimes joined hoftages, pledges, and guarantees. Hoftages are of feveral forts; for they either give themfelves voluntarily, or are given by order of the fovereign, or they are forcibly taken by the enemy. Nothing, for inftance, is at prefent more common, than to carry off hoftages for the fecurity of contributions.

X. The fovereign may, in virtue of his autho-

rity,

rity, oblige ſome of his ſubjects to put themſelves into the hands of the enemy as hoſtages; for if he has a right, when neceſſity requires it, to expoſe them to the danger of their lives, much more may he engage their corporal liberty. But on the other hand, the ſtate ought certainly to indemnify the hoſtages for the loſſes they may have ſuſtained for the good of the ſociety.

XI. Hoſtages are demanded, and given, for the ſecurity of the execution of ſome engagement; therefore it is neceſſary that they ſhould be retained, in ſuch manner as ſhall be judged proper, till the performance of what has been agreed on. Hence it follows that an hoſtage, who has made himſelf ſuch voluntarily, or he who has been given by the ſovereign, cannot make his eſcape. Grotius, however, grants this liberty to the latter; but his opinion does not ſeem to be well founded: for either it was the intention of the ſtate, that the hoſtage ſhould not remain in the hands of the enemy; or the ſtate had not the power of obliging the hoſtage to remain. The former is manifeſtly falſe, for otherwiſe the hoſtage could be no ſecurity, and the convention would be illuſive. Nor is the latter more true; for if the prince, in virtue of his tranſcendental property, can expoſe the lives of the citizens, why may he not engage their liberty? Thus Grotius himſelf agrees, that the Romans were obliged to return Clélia to Porſenna. But the caſe is not preciſely the ſame, with reſpect to hoſtages taken by the enemy; for theſe have a right to make their eſcape, ſo long as they have not given their word to the contrary.

XII. It is a queſtion often controverted, whether he, to whom hoſtages are given, can put them to death, in caſe the enemy do not perform their engagement? I anſwer, that hoſtages themſelves cannot give the enemy any power over their lives, of which they are not maſters. As to the ſtate, it has certainly the power of expoſing the lives of the ſubjects, when the public good requires it. But in this caſe, all that the public good requires, is to engage the corporal liberty of the hoſtages; and they can no more be rendered reſponſible, at the peril of their lives, for the infidelity of the ſovereign, than an innocent perſon can be treated as a criminal. Thus the ſtate by no means engages the lives of hoſtages. He, to whom they are given, is ſuppoſed to receive them on theſe conditions; and though by the violation of the treaty they are at his mercy, it does not follow that he has a right to put them to death; he can only retain them as priſoners of war.

XIII. Hoſtages, given for a certain purpoſe, are free ſo ſoon as that purpoſe is anſwered, and conſequently cannot be detained upon any other account, for which no hoſtages were promiſed. But if we have broke our faith in any other caſe, or contracted a new debt, the hoſtages then may be detained, not as hoſtages, but in conſequence of this rule of the law of nations, which authoriſes us to detain the perſons of ſubjects for the deeds of their ſovereigns.

XIV. The query is, whether a hoſtage is at liberty by the death of the ſovereign, who made the

covenant? This depends on the nature of the treaty, for the ſecurity of which the hoſtage was given; that is to ſay, we muſt examine whether it be *perſonal*, or *real*.

But if the hoſtage becomes ſucceſſor to the prince who gave him up, he is no longer obliged to be detained as an hoſtage, though the treaty be real; he ought only to put another in his place, whenever it is demanded. This caſe is ſuppoſed to be tacitly excepted; for it cannot be preſumed that a prince, for example, who has given his own ſon and preſumptive heir as an hoſtage, ever intended, that in caſe he ſhould die, the ſtate ſhould be without its chief.

XV. Sometimes pledges are alſo given for the ſecurity of a treaty of peace; and as we have ſaid that hoſtages may be detained for other debts, this may alſo be applied to pledges.

XVI. Another way, in fine, of ſecuring peace, is, when princes or ſtates, eſpecially thoſe who have been mediators of the peace, become guarantees, and engage their faith, that the articles ſhall be obſerved on both ſides; which engagement of theirs implies an obligation of interpoſing their good offices, to obtain a reaſonable ſatisfaction to the party injured contrary to treaty, and even of aſſiſting him againſt the injurious aggreſſor.

CHAP. XV.

Of the right of ambaſſadors.

I. IT remains now for us to ſay ſomething of ambaſſadors, and of the privileges which the law of nations grants them. The ſubject naturally leads us to it, ſince it is by means of theſe miniſters that treaties are generally negotiated and concluded.

II. Nothing is more common than the maxim, which eſtabliſhes that the perſons of ambaſſadors are ſacred and inviolable, and that they are under the protection of the law of nations. We cannot doubt but that it is of the utmoſt importance to mankind in general, and to nations in particular, not only to put an end to wars and diſputes, but alſo to eſtabliſh and maintain commerce and friendſhip with each other. Now as ambaſſadors are neceſſary to procure theſe advantages, it follows that God, who certainly commands every thing that contributes to the preſervation and happineſs of ſociety, cannot but forbid the doing any injury to thoſe perſons; but, on the contrary, he orders we ſhould grant them all the ſecurity and privileges, which the deſign and nature of their employment require.

III. Before we enter into the application of the privileges which the law of nations grants to ambaſſadors, we muſt obſerve with Grotius, that they belong

belong only to ambaſſadors ſent by ſovereign powers to each other. For as to deputies ſent by cities or provinces to their own ſovereigns, it is not by the law of nations that we muſt judge of their privileges, but by the civil law of the country. In a word, the privileges of ambaſſadors regard only foreigners; that is to ſay, ſuch as have no dependance on us.

Nothing then hinders an inferior ally from having a right to ſend ambaſſadors to a ſuperior ally; for in the caſe of an unequal alliance, the inferior does not ceaſe to be independent.

It is a queſtion, whether a king, vanquiſhed in war and ſtript of his kingdom, has a right of ſending ambaſſadors? But indeed this queſtion is uſeleſs, with reſpect to the conqueror, who will not even ſo much as think whether he ought to receive ambaſſadors from a perſon whom he has deprived of his kingdom. With regard to other powers, if the conqueror has entered into the war for reaſons manifeſtly unjuſt, they ought ſtill to acknowledge that perſon for the true king, who really is ſo, ſo long as they can do it without ſome great inconveniency; conſequently they cannot refuſe to receive his ambaſſadors.

But in civil wars the caſe is extraordinary; for then neceſſity ſometimes makes way for this right, ſo as to receive ambaſſadors on both ſides. The ſame nation, in that caſe, is for a time accounted two diſtinct bodies of people. But pirates and robbers, that do not conſtitute a ſettled government, can have no right of nations belonging to them, nor conſequently that of ſending ambaſſadors, un-

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leſs they have obtained it by a treaty, which has ſometimes happened.

IV. The ancients did not diſtinguiſh different ſorts of perſons ſent by one power to another; the Romans called them all *legati*, or *oratores*. At preſent there are various titles given to theſe public miniſters. But the employment is in the main the ſame; and the ſeveral diſtinctions are founded rather on the greater or leſſer ſplendor with which they ſupport their dignity, and on the greatneſs or ſmallneſs of their ſalary, than on any other reaſon derived from their character.

V. The moſt common diſtinction of ambaſſadors, at preſent, is into *extraordinary* and *ordinary*. This difference was entirely unknown to the ancients. With them all ambaſſadors were extraordinary, that is to ſay, charged with only a particular negotiation; whereas the ordinary ambaſſadors are thoſe who reſide among foreign nations, to tranſact all kinds of political concerns, and even to obſerve what paſſes in the reſpective courts.

The ſituation of things in Europe, ſince the deſtruction of the Roman empire, the different ſovereignties and republics that have been erected, together with the increaſe of trade, have rendered theſe ordinary ambaſſadors neceſſary. Hence ſeveral hiſtorians juſtly obſerve, that the Turks, who keep no miniſters in foreign countries, act very impoliticly; for as they receive their news only by Jewiſh or Armenian merchants, they do not generally hear of things till very late, or their informations

tions are bad, which often makes them take imprudent meaſures.

VI. Grotius obſerves, that there are two principal maxims of the law of nations, concerning ambaſſadors. The firſt, *that we ought to admit them*; the ſecond, *that their perſons are ſacred and inviolable*.

VII. With regard to the firſt of theſe maxims, we muſt obſerve, that the obligation of admitting ambaſſadors, is founded in general on the principles of humanity: for as all nations form a kind of ſociety among themſelves, and conſequently ought to aſſiſt each other by a mutual intercourſe of good offices, the uſe of ambaſſadors becomes neceſſary between them for that very reaſon. It is therefore a rule of the law of nations, that we ought to admit ambaſſadors, and to reject none without a juſt cauſe.

VIII. But though we are obliged to admit ambaſſadors, it is only a bare duty of humanity, which produces but an imperfect obligation. So that a ſimple refuſal cannot be regarded as an injurious act, ſufficient to lay a juſt foundation for a war. Beſides, the obligation to admit ambaſſadors regards as well thoſe ſent to us by an enemy, as thoſe who come from an allied power. It is the duty of princes, who are at war, to ſeek the means of re-eſtabliſhing a juſt and reaſonable peace; and they cannot obtain it, unleſs they are diſpoſed

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to liſten to the propoſals that may be made on each ſide; which cannot be ſo well negotiated as by employing ambaſſadors or miniſters. The ſame duty of humanity alſo obliges neutral, or indifferent princes, to afford a paſſage through their territories to ambaſſadors ſent by other powers.

IX. I mentioned that we ought not, without a juſt cauſe, refuſe admittance to an ambaſſador; for it is poſſible that we may have very good reaſons to reject him: for example, if his maſter has already impoſed upon us under pretext of an embaſſy, and we have juſt reaſon to ſuſpect the like fraud; if the prince, by whom the ambaſſador is ſent, has been guilty of treachery, or of ſome other heinous crime againſt us; or, in fine, if we are ſure that, under the pretext of negotiating, the ambaſſador is ſent only as a ſpy, to pry into our affairs, and to ſow the ſeeds of ſedition.

Thus, in the retreat of the ten thouſand, the hiſtory of which has been written by Xenophon, the generals reſolved, that ſo long as they were in the enemy's country they would receive no heralds; and what moved them to this reſolution, was their having found that the perſons who had been ſent among them, under the pretence of embaſſy, came really to ſpy into their affairs, and to corrupt the ſoldiers.

It may alſo be a juſt reaſon for refuſing admittance to an ambaſſador, or envoy from an allied power, when by admitting him we are likely to give diſtruſt to ſome other power, with whom it is proper we

ſhould

ſhould maintain a good underſtanding. Laſtly, the perſon or character of the ambaſſador himſelf may furniſh juſt reaſons for our not admitting him. This is ſufficient concerning the maxim relating to the admittance of ambaſſadors.

X. With regard to the other rule of the law of nations, which directs that the perſons of ambaſſadors be looked upon as ſacred and inviolable, it is a little more difficult to decide the ſeveral queſtions relating to it.

1°. When we ſay that the law of nations forbids any violence to ambaſſadors, either by word or action, we do not by this give any particular privilege to thoſe miniſters; for this is no more than what every man has a right to by the law of nature, a right that his life, his honour, and his property, be perfectly ſecure.

2°. But when we add, that the perſons of ambaſſadors are ſacred and inviolable by the law of nations, we attribute ſome prerogatives and privileges to them, which are not due to private perſons, &c.

3°. When we ſay that the perſon of an ambaſſador is ſacred, this ſignifies no more than that we inflict a ſeverer puniſhment on thoſe who offer violence to an ambaſſador, than on ſuch as commit an injury or inſult to private perſons; and the character of ambaſſadors, is the reaſon of our inflicting ſo different a puniſhment for the ſame kind of offence.

4°. Laſtly, the reaſon why we call the perſons of ambaſſadors ſacred, is becauſe they are not ſubject to the juriſdiction of the ſovereign to whom they

they are deputed, either in their perſons, their retinue, or effects; ſo that we cannot proceed againſt them, according to the ordinary courſe of juſtice; and it is in this that their privileges chiefly conſiſt.

XI. The foundation of theſe privileges, which the law of nations grants to ambaſſadors, is, that as an ambaſſador repreſents the perſon of his maſter, he ought of courſe to enjoy all the privileges and rights which his maſter himſelf, as a ſovereign, would have, were he to come into the ſtates of another prince, in order to tranſact his own affairs, to negotiate, for inſtance, or conclude a treaty, or an alliance, to regulate ſome branch of commerce, and other things of a ſimilar nature, &c. Now when a ſovereign goes into a foreign country, we cannot imagine that he loſes his character and independance, and that he becomes ſubject to the prince whoſe territories he viſits: on the contrary, he ought to continue as he was before, equal and independent of the juriſdiction of the prince, whoſe territories he enters; and the latter receives him on the ſame footing as he would chooſe to be received himſelf, if he went into the other's dominions. Now we muſt grant the ambaſſador the ſame prerogative and immunities, in conſequence of his repreſentative character.

The very end and deſign of embaſſies render theſe privileges of ambaſſadors neceſſary; for it is certain, that if an ambaſſador can treat with the prince to whom he is ſent, with a full independance, he will be much better qualified to perform his duty, and ſerve his maſter effectually, than if he were ſubject

ject to a foreign jurisdiction, or if he and his retinue could be consigned over to justice, and his goods arrested and seized, &c. Hence it is, that all nations have, in favour of ambassadors, made a very just exception to the general custom, which requires, that people who reside in a foreign prince's dominions, shall be subject to that prince's laws.

XII. These principles being supposed, I affirm,

1°. That there is no difficulty with respect to ambassadors, who are deputed to a power with whom their master is at peace, and have injured no man. The most evident maxims of the law of nature require they should be perfectly secure. So that if we affront or insult such a minister, in any manner whatsoever, we give his master just reason for declaring war. Of this king David furnishes us with an example *.

2°. With regard to ambassadors who come from an enemy, and have done no harm before they are admitted, their safety depends entirely on the laws of humanity; for an enemy, as such, has a right to annoy his enemy. Thus, so long as there is no particular agreement upon this article, we are obliged to spare the ambassador of an enemy, only in virtue of the laws of humanity, which we ought always to respect, and which oblige us to have a regard for every thing tending to the preservation of order and tranquillity.

3°. But when we have promised to admit, or have actually admitted the ambassador of an enemy,

* 2 Sam. chap. x.

my, we have thereby manifeftly engaged to procure him entire fecurity, fo long as he behaves well. We muft not even except heralds, who are fent to declare war, provided they do it in an inoffenfive manner.

4°. With regard to ambaffadors, who have rendered themfelves culpable, either they have done the injury of their own head, or by their mafter's order.

If they have done it of their own head, they forfeit their right to fecurity, and to the enjoyment of their privileges, when their crime is manifeft and heinous: for no ambaffador whatever can pretend to more privilege than his mafter would have in the fame cafe; now fuch a crime would not be pardoned in the mafter.

By *heinous crimes*, we here mean fuch as tend to difturb the ftate, or to deftroy the fubjects of the prince to whom the ambaffador is deputed, or to do them fome confiderable prejudice.

When the crime directly affects the ftate, whether the ambaffador has actually ufed violence or not, that is to fay, whether he has ftirred up the fubjects to fedition, or confpired himfelf againft the government, or favoured the plot; or whether he has taken arms with the rebels or the enemy, or engaged his attendants fo to do, &c. we may be revenged on him, even by killing him, not as a fubject, but as an enemy; for his mafter himfelf would have no reafon to expect better treatment. And the end of embaffies, inftituted no doubt for the general good of nations, does not require that we fhould grant to an ambaffador, who firft vio-

lates the law of nations, the privileges which that law allows to foreign miniſters. If ſuch an ambaſſador makes his eſcape, his maſter is obliged to deliver him up, when demanded.

But if the crime, however heinous or manifeſt, affects only a private perſon, the ambaſſador is not for that alone to be reputed an enemy to the prince or ſtate. Suppoſe his maſter had committed a crime of the ſame nature, we ought to demand ſatisfaction of him, and not take up arms againſt him till he had refuſed it; ſo the ſame reaſon of equity directs, that the prince, at whoſe court the ambaſſador has committed ſuch a crime, ſhould ſend him back to his maſter, deſiring him either to deliver him up, or to puniſh him: for to keep him in priſon till his maſter ſhall recall him, in order to puniſh him, or declare that he has abandoned him, would be to teſtify ſome diſtruſt of the juſtice of his maſter, and by that means affront him in ſome meaſure, becauſe he is ſtill repreſented by the ambaſſador.

5°. But if the crime be committed by the maſter's order, it would certainly be imprudence to ſend the ambaſſador back; ſince there is juſt reaſon to believe, that the prince who ordered the commiſſion of the crime, will hardly ſurrender, or puniſh the criminal. We may, therefore, in this caſe, ſecure the perſon of the ambaſſador, till the maſter ſhall repair the injury done both by his ambaſſador and himſelf. In regard to thoſe who do not repreſent the perſon of the prince, ſuch as common meſſengers, trumpets, &c. we may kill them on the ſpot, if they come to inſult a prince by order of their maſter.

But nothing is more abſurd than what ſome maintain, namely, that all the evil done by ambaſſadors, by order of their maſter, ought to be imputed intirely to the latter. Were it ſo, ambaſſadors would have more privilege in the territories of another prince, than their maſter himſelf, ſhould he appear there: and; on the other hand, the ſovereign of the country would have leſs power in his own dominions, than a maſter of a family has in his own houſe.

In a word, the ſecurity of ambaſſadors ought to be underſtood in ſuch a manner, as to imply nothing contrary to the ſecurity of the powers to whom they are ſent, and who neither would, nor could receive them upon other terms. Now it is plain, that ambaſſadors will be leſs bold in undertaking any thing againſt the ſovereign, or againſt the members of a foreign ſtate, if they are apprehenſive, that in caſe of treaſon, or ſome other heinous crimes, the government of that country can call them to an account for it, than if they had nothing to apprehend but correction from their maſter.

6°. When the ambaſſador himſelf has committed no crime, it is not lawful to uſe him ill, or to kill him by the law of *retaliation*, or *repriſals*; for by admitting him under that character, we have renounced our right to any ſuch revenge.

In vain would it be to object a great many inſtances of this kind of revenge, which are mentioned in hiſtory; for hiſtorians not only relate juſt and lawful actions, but alſo divers things done contrary to juſtice in the heat of anger, by the influence of ſome irregular and tumultuous paſſion.

7°. What

7°. What has been hitherto faid of the rights of ambaffadors, ought to be applied to their domeftics, and all their retinue. If any of the ambaffador's domeftics has done an injury, we may defire his mafter to deliver him up. If he does not comply, he makes himfelf acceffary to his crime, and in this cafe we have a right to proceed againft him in the fame manner, as if he had committed the fact himfelf.

An ambaffador, however, cannot punifh his own domeftics; for as this is not conducive to the end of his employment, there is no reafon to prefume that his mafter has given it him.

8°. With refpect to the effects of a foreign minifter, we can neither feize them for payment, nor for fecurity, in the way of juftice; for this would fuppofe, that he was fubject to the jurifdiction of the fovereign at whofe court he refides. But if he refufes to pay his debts, we ought, after giving him notice, to apply to his mafter, and if the latter refufes to do us juftice, we may feize the effects of the ambaffador.

9°. Laftly, as to the right of afylums and protections, it is by no means a confequence of the nature and end of embaffies. However, if it is once granted to the ambaffadors of a certain power, nothing but the welfare of the ftate, authorifes us to revoke it.

Neither ought we, without good reafons, to refufe ambaffadors the other forts of rights and privileges, which are eftablifhed by the common confent of fovereigns; for this would be a kind of an affront to them.

The END *of the* FOURTH *and* LAST PART.

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